

SCOTTSDALE

CITY COUNCIL MEETING

AMENDED AGENDA (PUBLIC COMMENT ADDED – PAGE 2)



COUNCIL

Mary Manross, Mayor

Wayne Ecton

Robert W. Littlefield

Cynthia Lukas

Ned O'Hearn

David Ortega

Tom Silverman

Tuesday, April 15, 2003

4:00 P.M.

CITY COUNCIL SPECIAL MEETING TO CALL EXECUTIVE SESSION

Call to Order – City Hall Kiva Forum, 3939 N. Drinkwater Blvd.

Roll Call

1. MOTION TO RECESS INTO EXECUTIVE SESSION, IF NEEDED, FOR LEGAL ADVICE AND TO CONSIDER THE CITY'S POSITION AND INSTRUCT ITS REPRESENTATIVES AND ATTORNEYS REGARDING NEGOTIATIONS AND ACQUISITION OF A PORTION OF THE FOLLOWING PARCEL FOR INCLUSION IN THE McDOWELL SONORAN PRESERVE:
780 acres of land located between Bell Road and Union Hills Road, at approximately 104th Street. A.R.S. 38-431.03 (A)(3), -(A)(4) and -(A)(7). Contact: Robert Cafarella 480-312-2577, (rcafarella@ci.scottsdale.az.us)

Adjourn

CITY COUNCIL EXECUTIVE SESSION

Immediately Following 4:00 P.M. City Council Special Meeting

Call to Order – City Hall Kiva Conference Room

1. DISCUSSION WITH REPRESENTATIVES OF THE PUBLIC BODY AND DISCUSSION AND CONSULTATION WITH CITY ATTORNEYS FOR LEGAL ADVICE AND TO CONSIDER THE CITY'S POSITION AND INSTRUCT ITS REPRESENTATIVES AND ATTORNEYS REGARDING NEGOTIATIONS AND ACQUISITION OF A PORTION OF THE FOLLOWING PARCEL FOR INCLUSION IN THE McDOWELL SONORAN PRESERVE:
780 acres of land located between Bell Road and Union Hills Road, at approximately 104th Street. A.R.S. 38-431.03 (A)(3), -(A)(4) and -(A)(7). Contact: Robert Cafarella 480-312-2577, (rcafarella@ci.scottsdale.az.us)

Adjourn

5:00 P.M.

CITY COUNCIL MEETING

Call to Order – City Hall Kiva Forum, 3939 N. Drinkwater Boulevard

Roll Call

Pledge of Allegiance

Invocation

Presentations/Information Updates

Proclamation Recognizing City Volunteers

Appointment

Associate Judge – Orest Jejna

Boards and Commissions

Historic Preservation Commission (1)

McDowell Sonoran Preserve Commission (3)

Planning Commission (2)

Tourism Development Commission (2)

*****Public Comment**

Citizens may complete one speaker/citizen comment card per night and submit it to the City Clerk before or during this evening's meeting. This "Public Comment" time is reserved for citizen comments regarding non-agendized items. No official Council action will be taken on these items.

Minutes

SPECIAL MEETINGS

REGULAR MEETINGS

EXECUTIVE SESSIONS

March 17, 2003

March 18, 2003

1. Kit Cat Lounge Liquor License

Request: Consider forwarding an approval recommendation to the Arizona Department of Liquor Licenses and Control for a person and location transfer for a series 6 (bar) State liquor license for a new bar location.

Location: 4426 N Saddlebag Tr

Reference: 8-LL-2003

Staff Contact(s): Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619, jefisher@ScottsdaleAZ.gov

2. Bashas #129 Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a location transfer of a series 09 (liquor store) State liquor license located within a retail grocery store.

Location: 11755 N 136th St

Reference: 17-LL-2003

Staff Contact(s): Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619, jefisher@ScottsdaleAZ.gov

3. Pure Fitness Use Permit

Request: Approve a conditional use permit for a health studio in a 25,000 +/-sq ft tenant space of a building located at 7330 E Shea Blvd, Suites 101 & 102 with Central Business District (C-2) zoning.

Location: 7330 E Shea Bl 101,102

Reference: 1-UP-2003

Staff Contact(s): Kira Wauwie AICP, Project Coordination Manager, 480-312-7061, kwauwie@ScottsdaleAZ.gov

4. Mountain View Park Final Plat

Request: Approve a Final Plat.

Location: Northwest corner of 96th Street & Mountain View

Reference: 25-PP-2002

Staff Contact(s): Bill Verschuren, Senior Planner, 480-312-7734, bverschuren@ScottsdaleAZ.gov

5. City of Scottsdale Well No. 123 Use Permit

Request: Approve a conditional use permit for a city well (municipal use) on a .17 +/- acre parcel located at the northeast corner of Scottsdale Road and East Princess Boulevard with Open Space (OS) zoning.

Location: Northeast corner of Scottsdale Rd & East Princess Blvd

Reference: 25-UP-2002

Staff Contact(s): Bill Verschuren, Senior Planner, 480-312-7734, bverschuren@ScottsdaleAZ.gov

6. Contract with Qwest Corporation for a dedicated telephone line that provides for sharing of freeway and local Intelligent Transportation System related data.

Request: Consider approval of Contract No. 2003-051-COS with Qwest Corporation, for \$23,416 per year, and increase the proposed budget for traffic signal lines in fiscal year 2003/04 by \$23,500 to cover the added expense. No additional budget is required for fiscal year 2003/04 for period of service April through June 2003.

Related Policies, References: Procurement Code; Resolution No. 4994, February 17, 1998; City Code, Chapter 17-21: Cooperate with other City officials in the development of ways and means to improve traffic conditions.

Staff Contact(s): Bruce Dressel, ITS Analyst, 480-312-2358, bdressel@ci.scottsdale.az.us

7. Rassner/Library and Scottsdale Community/Human Services Endowments.

Request: Consider approving the distribution of interest income from city's endowment program; including the recommendation from the Library Advisory Board for an award of \$20,000 to the library and the recommendation of the Human Services Commission for awards of \$1,000 to Concerned Citizens for Community Health, \$1,000 to Paiute Neighborhood Center, and \$1,000 to the Foundation for Senior Living Resolution.

Related references: Resolution # 6112.

Staff Contact(s): Sharyn Pennington, Budget/Operations Coordinator, (480) 312-7086, shap@scottsdaleaz.gov

8. Sole Source Purchase of 3M SelfCheck Machines for the Scottsdale Library System

Request: Consider authorization of a sole source purchase from 3M Library Systems for replacement of eight (8) self check out machines for use at four (4) Scottsdale library locations and one (1) outreach site at a total price of \$172,640.00.

Staff Contact(s): Debbie Tang, Special Projects/Facilities Manager, (480) 312-2040, dtang@scottsdaleAZ.gov for more information

9. Accept Arizona State Library State Grant-In-Aid construction grant for \$25,000 to bring Mustang Library lobby and restrooms in compliance with ADA

Request: The grant will be used to replace a portion of City funds budgeted for the Mustang Library ADA project. The project is budgeted in the Facilities Maintenance Department's FY 2002/03 operating budget for \$131,000. The project scope has been reduced and the total project cost is approximately \$94,000. The grant was anticipated and included in the approved FY 2002/03 Grants budget.

Related policies: the Americans with Disabilities Act, 1990.

Staff Contact(s): Please contact Debbie Tang, Special Projects Manager, 312-2040, dtang@ScottsdaleAZ.gov; Steve Arnold, Contracts Coordinator, 312-2181, stevearnold@ScottsdaleAZ.gov

10. WITHDRAWN

Amend the Recreational Land Use Agreement (RLUA) between the Bureau of Reclamation (BOR) and the City of Scottsdale.

11. Professional Services Agreement for Financial Advisor

Request: Authorize Professional Services Agreement No. 2003-047-COS with US Bancorp Piper Jaffray Inc. for Financial Advisor.

Staff Contact(s): Rebecca A. Eickley, Finance and Energy Manager, (480) 312-7084, reickley@ci.scottsdale.az.us

12. Professional Services Agreement for Bond Counsel

Request: Authorize Professional Services Agreement No. 2003-048-COS with Snell & Wilmenr for Bond Counsel for financings to include Improvement Districts (Ids), General Obligation (GO) Bonds, Water and Sewer Revenue (W & S) Bonds, Highway User Revenue Fund (HURF) Bonds, Municipal Property Corporation (MPC) Bonds, and Scottsdale Preserve Authority (SPA) Bonds.

Staff Contact(s): Rebecca A. Eickley, Finance and Energy Manager, (480) 312-7084, reickley@ci.scottsdale.az.us

13. Adoption of Notice of Intention to increase water and wastewater rates and establishment of May 19, 2003 as the date for a public hearing.

Request: Adopt Notice of Intention to set water and wastewater rates for Fiscal Year 2003/2004 and to establish May 19, 2003 as the date for a public hearing.

Staff Contact(s): Craig Clifford, Financial Services General Manager, (480) 312-2364, cclifford@ScottsdaleAz.gov

14. Gila River Indian Community Water Rights Settlement Agreement

Request: Adopt Resolution no. 6282, authorizing the execution of Agreement 2003-049-COS and Agreement 2003-050-COS and

Authorize execution of the Gila River Indian Community Water Rights Settlement Agreement (Agreement 2003-049-COS) and the Lease Agreement for CAP Water Among the City of Scottsdale, the Gila River Indian Community and the United States, as Trustee for the Gila River Indian Community (Agreement 2003-050-COS). The Settlement Agreement settles the water rights claims of the Gila River Indian Community, and the Lease Agreement provides a 100-year assured water supply of 12,000 acre-feet of CAP water to the City of Scottsdale.

Staff Contact(s): Beth Miller, Water Resources Advisor, (480) 312-5009, emiller@ci.scottsdale.az.us

15. Construction Bid Award for Scottsdale Road, Phase One, from Indian Bend to McCormick Parkway

Request: AUTHORIZE Construction Bid Award No. 03PB073 to Hunter Contracting Co., the lowest responsive bidder, at their total base unit price bid of \$7,491,359.22;

AUTHORIZE an increase in budget authorization in the total amount of \$1,800,000 to CIP Account No. S2707 (Scottsdale Road – Indian Bend to Gold Dust) effective in Fiscal Year 2003/04;

AUTHORIZE depositing the following estimated payments to CIP Account No. S2707 from the Town of Paradise Valley and various utility companies for work to be performed under City of Scottsdale construction contracts:

- \$1,100,000.00 from the Town of Paradise Valley per C.O.S. Contract No. 96001A, underground conversion of 69 KV power lines, which was approved by Council on December 9, 2002.
- \$400,000.00 from Southwest Gas for trenching and related costs for system relocation and expansion.
- \$200,000.00 from Qwest Communications for system relocation and expansion.
- \$100,000.00 from COX Communications for system relocation.

AUTHORIZE estimated payments totaling \$2,500,000 to APS for this company's direct costs to install 69kV underground conversions, 69kV temporary relocations, 12kV underground conversions and new street light system construction for the entire length of this project.

The construction contract proposed for award by this action is the first of two major contracts planned to widen and reconstruct a 2-¾ mile length of Scottsdale Road between Indian Bend Road and Gold Dust Street. This contract includes the widening of a one-mile length of Scottsdale Road between Indian Bend Road and McCormick Parkway and includes a new bridge to be constructed over the Indian Bend Wash immediately south of the McCormick Parkway. The underground conduit system for the 69kV power lines, through this portion of the project, will also be installed as part of this contract and the existing overhead 69kV lines will be temporarily relocated along the east and west sides of Scottsdale Road. The second construction contract to complete the remaining 1 ¾ mile widening and reconstruction of Scottsdale Road is planned for award in April, 2004.

Related Policies, References:

- Intergovernmental Agreement (IGA) No. 96-0001 between City of Scottsdale (city) and Town of Paradise Valley (town) (Approved 2/5/96 by Scottsdale City Council).
- Amendment to IGA No 96-001A which established responsibilities for under grounding of the existing 69kV electrical power line between the city and the town. (Approved 12/9/02 by Scottsdale City Council and approved 12/19/02 by Paradise Valley Town Council)
- De-annexation Ordinance (Approved 11/7/02 by Paradise Valley Town Council and approved 12/9/02 by Scottsdale City Council).

Staff Contact(s): Alex McLaren, Construction and Design Director, (480) 312-7099, amclaren@ci.scottsdale.az.us; Dan Walsh, Project Manager, (480) 312-5248, dwalsh@ci.scottsdale.az.us

16. Contract Modification for Phase 2 Design of the Chaparral Water Treatment Plant Inlet and Distribution Lines.

Request: Authorize Contract Modification to Engineering Services Contract No. 2002-073-COS-A with HDR Engineering, Inc., in the amount of \$1,375,559 for Phase 2 of the design of Chaparral Water Treatment Plant Inlet and Distribution Line Project.

Related Policies, References: Engineering Services Contract No. 2002-073-COS, approved by City Council on July 1, 2002.

Staff Contact(s): Doreen Song, P.E. Project Manager, (480)312-2367, dsong@scottsdaleaz.gov

17. Contract for Legal Services in connection with City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348

Request: Adopt Resolution No. 6280 authorizing the Mayor to execute Contract No. 2001-038A-COS, an outside counsel contract renewal in a maximum amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00) with the law firm of GRAHAM & ASSOCIATES, LTD. for legal services regarding representation of the City of Scottsdale in the litigation entitled City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.

Related Policies, References: Resolution No. 6280

Staff Contact(s): David A. Pennartz City Attorney, dpennartz@scottsdaleaz.gov
(480) 312-2405

18. Acquire right-of-way/easements (ROW) for the widening of 96th Street from Shea Boulevard to Thunderbird Road

Request: Adopt Resolution No. 6285 authorizing the acquisition of various rights-of-way and easements from property located at 9598 E. Cactus Road, owned by Allan and Julie La Magna, at the total appraised value of \$117,611 plus approximately \$1,500 in closing costs for the 96th St. Improvements CIP project (Shea – Thunderbird Rd).

Related Policies, References:

- a. Resolution No. 6253 authorizing the initiation of negotiations for the acquisition of 16 various parcels of ROW from nine property owners for the 96th St. Improvements project (Shea-Thunderbird Rd).
- b. Cactus Corridor Equestrian Overlay District
- c. Bond 2000 CIP Project

Staff Contact(s): Marek Urbanek, Project Manager, (480) 312-2563, murbanek@ci.scottsdale.az.us; Rhonda Thomas, Right of Way Agent, (480) 312-7847, Rthomas@ci.scottsdale.az.us

Regular Agenda begins on the following page

19. Public Hearing on Scottsdale's Community Development Block Grant Fiscal Year 2003-2004 Annual Action Plan

Request: Solicit public testimony regarding the Fiscal Year 2003-2004 Annual Action Plan for the use of Community Development Block Grant (CDBG) funds in the amount of \$1,400,000; and the HOME Investment Partnerships Program (HOME) funds in the amount of \$423,892; and Adopt Resolution No. 6274.

Related policies and references: City Council adopted Resolution No. 5501 on March 20, 2000 which authorized and adopted the City of Scottsdale's Consolidated Plan for general use of CDBG funding and HOME funds for Fiscal Years 2000/2004.

Staff Contact(s): Contact Mark Bethel, Community Assistance Manager (480)312-2309, mbethel@scottsdaleaz.gov

20. Pueblo Poquito Abandonment

Request: Approve the abandonment of a certain portion of the north 10 feet public right-of-way for Mountain View Road, a 20 feet wide section of 123rd Street public right-of-way including a 46 feet radius cul-de-sac, and a 33 feet General Land Office patent roadway easement along the 123rd Street alignment. 123rd Street will change from a public to a private street.

Location: 123rd Street & Mountain View Road

Reference: 11-AB-2002, Resolution No. 6268

Staff Contact(s): Pete Deeley, Project Coordination Manager, 480-312-2554, pdeeley@ScottsdaleAZ.gov

21. Pueblo Poquito Replat

Request: Approve a replat of Pueblo Poquito Final Plat, a 6-lot subdivision.

Location: Northeast corner of Mountain View Road & 123rd Street

Reference: 10-PP-1998#2

Staff Contact(s): Al Ward, Senior Planner, 480-312-7067, award@ScottsdaleAZ.gov

Public Comment

Citizens may complete one speaker/citizen comment card per night and submit it to the City Clerk before or during this evening's meeting. This "Public Comment" time is reserved for citizen comments regarding non-agendized items. No official Council action will be taken on these items.

City Manager's Report**Mayor and Council Items****Adjournment**

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MINUTES

SCOTTSDALE CITY COUNCIL

CITY COUNCIL MEETING

Monday, March 17, 2003

**The Kiva
City Hall
Scottsdale, Arizona**

MINUTES
SCOTTSDALE CITY COUNCIL
CITY COUNCIL MEETING
Monday, March 17, 2003

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CALL TO ORDER (IN CITY HALL KIVA FORUM)

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Monday, March 17, 2003 in the Kiva, City Hall, at 5:06 P.M.

ROLL CALL

Present:

Mayor Mary Manross
Vice Mayor Ned O'Hearn
Council Members David Ortega, Tom Silverman, Robert Littlefield,
Wayne Ecton, and Cynthia Lukas

Also Present:

City Manager Jan Dolan
City Attorney David Pennartz
City Clerk Sonia Robertson

Pledge of Allegiance

Scout Troop #2247 from Cherokee School led the audience in the Pledge of Allegiance.

Invocation

Pastor Steve Johnson and Associate Pastor Eliseo Bongarra from Mosaic Church in Scottsdale offered the invocation in English and Spanish.

Boards, Commissions, and Task Forces

Before nominations for each commission, Vice Mayor O'Hearn briefly identified the appropriate commission and its purpose along with any special qualifications for the vacant position, if any.

Airport Advisory Commission (2)

Vice Mayor O'Hearn opened the floor for nominations

Councilman Littlefield nominated Fred Madanick
Councilman Ecton nominated Robert Underdown
Mayor Manross nominated James Osborne
Vice Mayor O'Hearn nominated William Stenseth

With no further nominations, Vice Mayor O'Hearn closed the floor for nominations.

Fred Madanick and **James Osborne** were appointed to the Airport Advisory Commission by a majority vote.

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Board of Adjustment (1)

Vice Mayor O'Hearn opened the floor for nominations

Councilwoman Lukas nominated Neal Waldman
Councilman Ecton nominated Robert Underdown

With no further nominations, Vice Mayor O'Hearn closed the floor for nominations.

Neal Waldman was appointed to the Board of Adjustment by a majority vote.

Building Advisory Board of Appeals (2)

Vice Mayor O'Hearn explained that there were only two applicants for this board; therefore, Council would vote on the applicants.

Sandra Herd and **Christopher Valocchi** were appointed to the Building Advisory Board of Appeals by a unanimous vote.

Development Review Board (1)

Vice Mayor O'Hearn opened the floor for nominations

Councilman Ortega nominated Jeremy Jones

With no further nominations, Vice Mayor O'Hearn closed the floor for nominations.

Jeremy Jones was appointed to the Development Review Board by a unanimous vote.

Human Relations Commission (1)

Vice Mayor O'Hearn opened the floor for nominations

Councilman Silverman nominated Carol Padwe
Councilman Ortega nominated Enid Seiden

With no further nominations, Vice Mayor O'Hearn closed the floor for nominations.

Carol Padwe was appointed to the Human Relations Commission by a majority vote.

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Library Board (1)

Vice Mayor O'Hearn opened the floor for nominations

Councilman Ecton nominated Richard Chappell III
Councilman Ortega nominated Donald Sklodowski

With no further nominations, Vice Mayor O'Hearn closed the floor for nominations.

Richard Chappell III appointed to the Library Board by a majority vote.

Personnel Board (1)

Vice Mayor O'Hearn opened the floor for nominations

Councilman Ecton nominated Laura Krause
Councilwoman Lukas nominated Eric Reuss M.D.

With no further nominations, Vice Mayor O'Hearn closed the floor for nominations.

Laura Krause was appointed to the Personnel Board by a majority vote.

Public Comment

Jodi Paulsen, 8630 E. Dianna Drive, explained that citizens are wondering why Council is not planning on constructing senior housing on the former Smitty's site. She explained that citizens want senior housing on the site and liked the Trend Homes plan the least. She urged Council to reconsider their decision not to place senior housing on the site.

Von Schwartz, 8641 E. Cambridge Ave., stated his support of senior housing at the location of the new senior center. He explained that this would be an opportunity to place a beautifully designed project on the site.

Mary Seales, 8665 E. Belleview, expressed her opinion that the Trend Homes proposal is not a good option for the former Smitty's site since it would create noise and traffic problems. She noted that the southern part of the city is on a downward spiral. She stated her support for senior housing on the site.

Barbara Cawthorne, 8720 E. Forest Drive, expressed concern regarding the Los Arcos project. She stated her desire to have a better aesthetic appeal for the project while expressing concern about the overnight parking that Wal-Mart would generate. She acknowledged that some subsidies are necessary but stressed her opinion that subsidies should be used for non-profit organizations. She explained that the life of a big box center is estimated at 20-30 years. She stated that this proposed project would never have been allowed in north Scottsdale. She urged Council to approve something on the site of the quality that the south deserves.

Daniel Basinger, 29503 N. 107th Place, reminded everyone that there are several city-sponsored events scheduled for April. A Green Building lecture regarding water conservation will be held on April 3rd at 7:30 p.m. in Urban Design Studio. On April 5th, a Household Hazardous Waste Collection event will be

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held at 9191 San Salvador Drive. Also on April 5th, volunteers will be working on the Christmas in April project where two residential homes will be rehabilitated. On April 12th and 13th, all neighborhood and homeowner associations are encouraged to clean up their neighborhoods. The week of April 14th, city staff will be traveling to the schools and discussing a variety of environmental topics. Finally, on April 26th, the Adopt-A-Road Program kicks off. He then announced that DC Ranch has committed to build their planning unit 1 (514 units) under the Green Building Program.

Consent Agenda

1. Scottsdale Housing Agency Plan for Fiscal Year 2003

Request: Adopt Resolution No. 6240, which approves the 2003 update to the Agency Plan for the operation of the Section 8 rental assistance program (Housing Choice Voucher) with funding from the United States Department of Housing and Urban Development (HUD) and authorizes submittal of that Plan to HUD. The resolution also authorizes the acceptance of any Housing Vouchers offered to assist current tenants of properties opting out of federal assistance and up to thirty Fair Share Housing Vouchers if HUD offers them in the 2003/04-program year.

Staff Contact(s): Mark Bethel, Community Assistance Mgr, (480) 312-2309, bethel@scottsdaleaz.gov.

2. Contract Modification for design of Waterline Replacements.

Request: Authorize contract modification to Engineering Services Contract No.2002-030-COS-A with CSA Engineering, Inc. in the amount of \$312,625 for the design of waterline replacement projects for Year 2003.

Related Policies, References: Engineering Services Contract No. 2002-030-COS, approved by City Council on March 18, 2002.

Staff Contact(s): Alison Tymkiw, Sr. Project Manager, (480) 312-7985, atymkiw@ci.scottsdale.az.us

3. Sale of Surplus Property to Resolve Encroachment

Request: Adopt Resolution No. 6267 authorizing the sale of approximately 234 square feet of City owned property for \$5,000.00 to the owner of the Pepin's Restaurant property located in the Civic Center Mall at 7363 Scottsdale Mall.

Related Policies, References: Section 2-221(b)(4) of the Scottsdale Revised Code, which allows the sale of City property directly to adjoining property owners.

Staff Contact(s): Ron King, Asset Management Coordinator, 480-312-7042, rking@scottsdaleaz.gov

4. Architectural Services Contract for design services for Public Underground Parking Facility at Loloma.

Request: Confirm the execution of an Architectural Services Contract No. 2003-002 between DFD Cornoyer Hedrick (Project Architect) and the Arts District Group, L.L.C., an Arizona limited liability company, hereinafter referred to as (Loloma Developer) in the amount of \$259,000.00 for design of the Public Underground Parking Facility at Loloma.

Related Policies, References: Loloma Redevelopment Agreement adopted by City Council on March 11, 2002 on file at the City Clerk's Office.

Staff Contact(s): Corey E. Lew, Project Manager, (480) 312-7769, clew@scottsdaleaz.gov

5. Acquire right-of-way/easements (ROW) for the widening of 96th Street from Shea Boulevard to Thunderbird Road.

Request: Adopt Resolution No. 6273 authorizing the acquisition of ROW located at 9610 E. Cactus Road from The Summit Church at the appraised value of \$38,016 plus approximately \$1,500 in closing costs for the 96th St. Improvements project (Shea – Thunderbird Rd).

Related Policies, References:

- a. Resolution No. 6253 authorizing the initiation of negotiations for the acquisition of 16 various parcels of ROW from nine property owners for the 96th St. Improvements project (Shea-Thunderbird Rd).
- b. Cactus Corridor Equestrian Overlay District
- c. Bond 2000 CIP Project

Staff Contact(s): Marek Urbanek, Project Manager, (480) 312-2563, murbanek@ci.scottsdale.az.us;

Rhonda Thomas, Right of Way Agent, (480) 312-7847, Rthomas@ci.scottsdale.az.us

6. Development of specifications and standards for Intelligent Transportation System (ITS) equipment. Acquisition and installation of software to inventory and monitor operating status of the ITS fiber network.

Request: Consider adoption of Resolution No. 6265 to approve Engineering Services Contract No. 2003-011-COS with URS Corporation, in the amount of \$92,833.

Related Policies, References: Procurement Code; City Code, Chapter 17-21: Cooperate with other City officials in the development of ways and means to improve traffic conditions.

Staff Contact(s): Bruce Dressel, ITS Analyst, 480-312-2358, bdressel@ci.scottsdale.az.us

COUNCILWOMAN LUKAS MOVED TO APPROVE CONSENT ITEMS 1-6. COUNCILMAN ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

Regular Agenda

7. McDowell Mountain Ranch Park & Aquatic Center

Request: Approve a revised Municipal Use Master Site Plan for 40+/- acres located at the southeast corner of Thompson Peak Parkway and McDowell Mountain Ranch Road.

Location: E. McDowell Mountain Ranch Rd.

Reference: 20-UP-1994#2

Staff Contacts: Kira Wauwie AICP, Project Coordination Manager, 480-312-7061, kwauwie@ScottsdaleAZ.gov

Kroy Ekblaw introduced item 7 for discussion. He explained that staff's presentation would be presented in segments as explained below.

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PRESENTATION

Site Location and Request – Kroy Ekblaw
Park Facility Needs and History – Bill Exham
Site Plan Design Options – Phil Weddle
Traffic Analysis – John Little
Alternatives and Recommendation – Bill Exham
Bureau of Reclamation – Carol Erwin

REQUEST FOR COUNCIL ACTION

To Approve a Revised Municipal Use Master Site Plan

- Proposed revisions affect 17 acres of a 40 acre site
- Located within McDowell Mountain Ranch Park
- Approved site plan required by zoning ordinance

Existing Approved Site Plan Includes:

-Aquatic Center, Fitness, Tennis & Volleyball Courts, Skate Park, Open Recreation Area, Playground & NAOS

Proposed Revisions to Site Plan Analyzed in Two Options:

•Option A Site Plan Includes:

- Open Recreation Area, Playground & NAOS
- No Aquatic Center, Fitness or Skate Park.

•Option B Site Plan Includes:

- Aquatic Center, Fitness, Skate Park, Open Recreation Area, Playground & NAOS

Bill Exham presented the following information. He explained that McDowell Mountain Ranch is located in Planning Unit C. The planning unit is expected to have 108,000 people and be one of the more densely populated planning units within the city. The more people in an area, the more demand for recreational amenities and park space.

He noted that on the McDowell Mountain Ranch site, there is an elementary and middle school, a joint use library, recreational fields, and additional restroom facilities. There will be seven joint use park/school sites serving the area. He explained that the area would eventually be served by trailheads to be constructed as part of the amenities to serve the general area.

The reason that many parks and schools are located together is because it is difficult for children to get to the recreational amenities. He stressed that there is a nationwide movement to have joint school/park facilities. The national standard for public pools is 1 pool per 25,000 people. Scottsdale currently has 1 public pool for 73,000 people.

Mr. Exham noted that there are three high schools currently using Cactus Pool; therefore, the facility is at capacity. Due to the proposed facility serving the existing demand, it is estimated that vehicle miles will be reduced that are currently driven to transport students to Cactus Pool since the proposed site will be closer for some users. He stressed that although another pool will be needed in the future to serve the area, this location would serve the area in the highest need at this time.

ORIGINAL SITE PLANNING

•City staff, Scottsdale School District, and the Master Developer of McDowell Mountain Ranch worked together to develop the preliminary plan and identify the best location.

- Large numbers of families in future, easy access to Desert Mt. High School and eastern areas, open space to the west, lower elevation than homes, major crossroads.
- Land dedicated to the City for this purpose, approved by the School Board and City Council.

Mr. Exham explained that the Scottsdale School Board and City Council agreed to an IGA on how to build, manage, and pay for the facilities on the site. After the Bond Election in 2000 where the funds to build the site were approved, the city hired an architect and continued with public meetings to discuss the approved Master Plan.

NEIGHBOR CONCERNS

- Traffic, noise, and crime.
- Others wanted amenities to be built near where they live.
- Result is the development of two options which include major changes to the 1994 plan.

Mr. Exham addressed concerns that the facility would escalate criminal activity in the area. He noted that a police evaluation of similar amenities indicates that mainly minor incidents occur at park facilities. In relationship to the area, the police have no reason to believe that there would be any major problems or gang activity related to the facility. He noted that the same concerns were raised in response to the proposed ice rink a few years ago, although that has not happened. Police have informed staff that good design can reduce criminal behavior; therefore, crime might even be reduced in the area. He stressed the importance of the desert landscaping that would enhance surveillance of the area.

He mentioned that there is already a police school resource officer on the site so there is a regular police presence on the site.

Phil Weddle continued the presentation as the city's design consultant. He noted that there were actually two different zones that were identified on the site. Zone B was identified as a high visibility area with close proximity to neighbors so low impact amenities are proposed. Zone A was identified at a lower elevation and has more landscape screening between it and adjacent neighbors. It has the potential for an additional access off of Thompson Peak Parkway.

SITE ANALYSIS – Original Master Plan SITING ISSUES

- environmental considerations
- distance to homes
 - noise
 - lighting
- vegetation
- activity zones

CONCEPTUAL MASTER PLAN – Option A

- Locates amenities on the southern portion of the site adjacent to the existing ball fields
- Amenities would include open recreation, a playground, a restroom facility, and expanded parking.
- The remaining of the site would be left undeveloped
- No required on-site circulation improvement

CONCEPTUAL MASTER PLAN – *Option B (broken into 2 zones)*

- Reduced density
- Facilities re-located away from homes to allow for more open space
- Eliminated low priority amenities
- Scaled back skate park
- Relocated fitness facility off-campus
- 2 new accesses from Thompson Peak Parkway – would allow the circulation for the aquatic facility to operate independent of the circulation of the school

Low priority amenities have been eliminated with this option to allow for more open space.

John Little presented the following information. He stressed that the city requested that the transportation analysis include an additional 10,000 trips per day above the projected amount to ensure that the plan would be feasible.

WHAT ARE WE PLANNING TO DO?

Concerns

- Access to School and Park site
- Westbound MMRR left turn backup
- Northbound TPP right turn backup
- Additional traffic
- Conflict with school traffic
- Safe Access

Improvements

- Construct traffic signal & add NB right turn bay by August 2003.
- Extend the left-turn lane on MMR Road
- Add another right-turn lane on Thompson Peak
- New access from TPP, new access from MMRR and loop road
- Construct a gate to separate the park traffic from the school
- Add enhanced pedestrian crossings on school road
- Work with the schools – drop off and pick up
- Schedule swim classes/programs around school times

MMR TRAFFIC CONCLUSION

- There are existing and future traffic issues that need to be addressed.
- Street improvements can be made to resolve these traffic concerns
- Loop Road enhances access to the site (under Thompson Peak Parkway bridge)
- Delay will be reduced especially for the critical movements discussed previously
- This site works

Mr. Little explained that short of a 100-year event, the proposed Loop Road would not flood. In a 100-year event, the roadway would need to be closed the same as many of the city's roads throughout the community until the water recedes.

The traffic delays at 102nd Street would be significantly reduced by construction of Loop Road from approximately 120 seconds to approximately 18 seconds. The evening traffic movements from Thompson Peak Parkway to McDowell Mountain Ranch Road would also be significantly improved.

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ALTERNATE SITES – ACCESS

MMR Site

- Intersection of Two Arterial Streets
- Direct Signalized Access
- Existing Infrastructure
- Pedestrian/Bike Access
- Proximity to School

DC Ranch Site

- Close to 101 Freeway
- Multiple Ways to Access Site
- Impact to Local Streets & Neighborhoods
- Planned Infrastructure
- Pima Access – State lands

ALTERNATE SITES - TRIP GENERATION & DISTRIBUTION

MMR Site

- Better opportunity to combine trips for School and Park Uses
- Better Pedestrian and Bicycle Access
- Peak Use Does Not Conflict with School Traffic
- Adds 1,900 Daily Trips to TPP

DC Ranch Site

- Increase in Trip Generation From Existing Neighborhood Park Plan
- Peak Use Conflicts with Adjacent Commercial Traffic
- Adds 1,000 Daily Trips to TPP

ALTERNATE SITES – VOLUME / CAPACITY

MMR Site

- MMR & TPP Under Capacity
- 102nd Place Access Requires Signal
- Signal Does Not Hurt System

DC Ranch Site

- Loop 101-Pima/Princess Intersection Is Over Capacity
- Staff does not support a traffic signal on Pima because it would increase Pima Road delay
- Without a signal at Pima Road, neighborhood streets are negatively impacted.

TRAFFIC COMPARISON CONCLUSION

- DC Ranch Site Limitations:
 - Impact on neighborhood Streets
 - Street Infrastructure is not developed
 - Pima Access uncertain
 - Traffic will still utilize TPP
- Transportation Staff believes that the McDowell Mountain Ranch Site is better suited to accommodate the Aquatic Center

Mr. Exham explained that the DC Ranch location is restricted by a natural wash and power line corridor through the site.

ALTERNATE SITES – PLANNED PARK CLASSIFICATION

MMR Site

- Community Level Park
- Drive-in traffic from entire planning unit

DC Ranch Site

- Neighborhood Level Park
- Walk-in/Bike-in traffic from surrounding neighborhoods

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ALTERNATE SITES – SIZE OF SITE

MMR Site

- 71 acres School/Park integrated site.
- 17 available for development of the final phase

DC Ranch Site

- 14.3 total acres neighborhood park site
- 12.8 available for development

ALTERNATE SITES - PROXIMITY TO RESIDENTS

MMR Site

Aquatic Center planned approximately 1100 feet away from nearest resident and 30 feet below the grade of the school.

DC Ranch Site

Aquatic Center would be approximately 325 feet from the nearest future resident buffered by a wash.

Mr. Exham explained that to build the amenities on either site, the cost would remain approximately the same. He stressed that the new operational costs for the facility have been included in the proposed balanced 5-year budget that has been submitted to Council for consideration.

ALTERNATE SITES – ACCESS TO FACILITIES AFTER SCHOOL

MMR Site

2 schools on the site with approximately 1600 children

DC Ranch Site

No schools on site

SUMMARY OF RECOMMENDED *OPTION B*

- Option B* at the McDowell Mountain Ranch site is the best location to accommodate the planned amenities.
- *Option B* meets all criteria for a Municipal Use Permit.
- Responds to identified concerns from the public process.
- Improves existing traffic conditions.
- Provides best access for children.
- Recommended for approval by unanimous vote of both the Parks and Recreation Commission and the Planning Commission.

Carol Erwin, with the Bureau of Reclamation (Bureau), explained that the Bureau was asked to give conceptual approval for the skate park and Loop Road because they would be built on bureau land. The Bureau gave their approval since the facility would be open to the general public and since the facility would be consistent with a recreational land use agreement that the Bureau entered into with the city to help create recreational development on bureau land. The partnership has been a good one creating various recreational facilities. The skate park would provide the Bureau the opportunity to partner with the city to serve a segment of the population that they often don't get a chance to serve.

Final approval from the Bureau would hinge of three things: 1) approval by the City Council, 2) a formal request from the city, and 3) having the National Environmental Policy Act requirements met by the city.

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Mayor Manross opened public testimony.

Eneas Kane, 7600 E. Doubletree Ranch Road, spoke as Vice President and General Counsel to DMB Associates (the developer of DC Ranch). He explained that the city approached DMB approximately 9 months ago and asked the area to serve as an alternative site provider for the aquatic center in the event it needed one. Since agreeing, they have spent a great deal of time speaking to people who have become more involved in this increasingly public process. He requested that the site be removed from consideration as an alternative site.

Alan Kaufman, 8711 E. Pinnacle Peak Road, #241, represented the ASAP Committee, the Coalition of Pinnacle Peak, and other civic groups and individuals who support locating the new proposed aquatic center and skateboard facility at a location other than McDowell Mountain Ranch. He noted that locating the proposed facilities at McDowell Mountain Ranch is optional. He stated his belief that it is the wrong place for the facility. He felt that there is no need to rush a decision on this matter since there is no money available at this time. He urged Council to take steps to avoid the traffic mess that would be created at this site by building the facilities at another location.

Dan Sommer, 10346 E. Morning Star Drive, spoke against the McDowell Mountain Ranch site for the proposed facility. He noted that the McDowell Mountain Ranch Community Association conducted a non-scientific poll, which indicated that the majority of residents who responded to the poll were opposed to the amenities being built on the site. He urged Council to consider moving the amenities to another location.

Lowell Hicks, 11007 E. Winchcomb, explained that he retired after working 39 years as a consultant in traffic safety and accident reconstruction. Based upon his experience, he stressed that the proposed facility should not be placed at McDowell Mountain Ranch. He explained that the increased access points off of Thompson Peak Parkway would increase the accident rate in the area.

Bob Alico, 11043 E. Winchcomb Drive, addressed concerns with the traffic study results. He explained that the study concluded that the road system would be at capacity but still would sustain the traffic. He stated that this conclusion is predicated on the fact that all traffic must keep moving without any unusual occurrences. He urged Council to consider the safety issue before making their decisions.

Gregg Linn, 10994 E. Beck Lane, explained that he is a certified public accountant and wished to address financial concerns related to the McDowell Mountain Ranch site. He noted that the trouble with the proposal is that the proper capital and operating funds are not currently available to build a first class facility while addressing safety and traffic concerns. He pointed out his belief that other locations would not require the same level of safety and traffic expenditures. He urged Council to make fiscally responsible decisions.

Kate Fitzgerald, 11444 E. Blanche Drive, stated that she lives in McDowell Mountain Ranch. She explained that, although she is in favor of shared facilities, this is not the right location for the additional facilities. She displayed various of photos taken of the proposed site when running water cut through the property after recent storms rolled through the area. She urged Council to think about the future and make the best decision possible to make the most of tax dollars.

Lewis Rappaport, 10819 E. Butherus Drive, spoke in opposition to the McDowell Mountain Ranch location. He explained that the proposed facility was not disclosed to him when he purchased his home in the area. He suggested that Council vote for Option A and seek an alternative site. He stressed that the voter approved bond money could be used for a facility at an alternative site.

John Blangiando, 10823 E. Autumn Sage Drive, explained that he built a home at McDowell Mountain Ranch and the proposed facility was never disclosed. He stated that he is disturbed at the reassurances that have been provided to Council regarding school safety. He stressed that it is critical to understand that if the proposed aquatic center were added to the site, the entire complex would have to be viewed as the school campus. He urged the city to expect any security measures to be breached.

Ruth Mones, (no address given), stated her belief that citizens have no choice. She felt that many of the supporters of the McDowell Mountain Ranch facility do not live in the neighborhood. She explained her opinion that the process was flawed. She stated that Council should chose Option A and think about an alternative site.

Ann Barton, 12712 N. 120th Place, explained that she is a senior at Desert Mountain and the past captain of the dive team. She was excited about the proposed facility when the land was donated to the city. She stated, in the past, Scottsdale has valued the quality of life as a high priority; however, the center continues to be delayed. She explained that these aquatic centers are a source of life for people who live around them. Many high schools compete for pool space at Cactus Park. She stated that it is the city's responsibility to ensure that the city remains a great place to live.

Mary Lee Sturgeon, 10883 E. LeMarche Drive, expressed support for Option B and urged Council's support for the long-planned expansion of the McDowell Mountain Ranch facilities. She explained that she was pleased to have been involved in the planned improvements that would improve traffic flow and enhance safety. She stated that children are the future and urged Council's support for Option B.

Mary Versosky, 15185 N. 102nd Street, explained that she doesn't have a problem with the pool. She claimed she was not informed about the proposed amenities when she purchased her home in 1999. She felt strongly that the proposed location of the aquatic center is dangerous and there is no way to make it safe. She questioned why the center isn't more centrally located if it is for regional use.

Paula Sturgeon, 10883 E. LeMarche Drive, explained that she bought her home in 1997 with the understanding that the aquatic center would be built. She stated that research has shown that the community has a vested interest in resources that support children and families. She expressed her belief that the proposed park would do just that.

Callie Decker, 10473 E. Star of the Desert Drive, questioned the validity of the non-scientific poll conducted by the homeowner's association. She noted that she had just returned from swimming practice when the person taking the poll walked past her home without asking for any input. She felt this was because he could easily see that her family would support the facility. She urged the city to build the aquatic center at McDowell Mountain Ranch.

Christine Schild, 10849 E. Jasmine Drive, explained that Scottsdale has a history of doing things their own way and values a variety of high-quality recreational facilities. She stated her opinion that the city's history is expressed in the General Plan. One of the goals expressed in the General Plan is to improve the quality of life for all Scottsdale residents by ensuring a wide range of recreational facilities. She explained that there is a significant need for additional park facilities in north Scottsdale. She stated her belief that the traffic concerns were addressed and urged the city to proceed with the facility.

Kenneth V. Lewis, 11026 E. Verbena Lane, explained that one of the reasons he purchased his home in 1996 was due to the proposed park facilities. He noted that his family would use the amenities and submitted petitions signed by residents in favor of the facility at McDowell Mountain Ranch. He

explained that he is currently compiling a master plan for the entire City of Scottsdale and is aware of the drainage issues involved with building on Bureau of Reclamation property. He stressed that it would not be a problem in this location. He felt that city staff has addressed all the issues involved with building the facility on the McDowell Mountain Ranch site and urged Council to support Option B.

Shelley Anderson, 158906 Gold Dust, spoke on behalf of the Parks and Recreation Commission. She noted that the commission voted unanimously to support the facility at the McDowell Mountain Ranch site. She stated that during the discussions, staff suggested many improvements, which the commission believed benefit the residents of the area. She pointed out that the DC Ranch site is smaller, includes less improvements, and residents of the area have not been brought into the process.

Joy Russell, 9106 N. 115th Street, spoke as a member of the Board of Directors of the Arizona Swimming, Inc., which represents competitive swimmers. She explained that there is no doubt that the city's aquatic facilities are overcrowded. While the city is debating this issue, additional kids are turned away from facilities. She urged Council to support Option B at McDowell Mountain Ranch.

Kim Abbs, 9719 E. Pine Valley, explained that her family was excited about the park and aquatic center; however, never felt it would take so long. She stated that it is time to honor the expertise of city staff and look at the facts presented since there is no better place to locate the facilities. She hoped that Council would look at the facts and make a firm decision to support Option B.

Jason Ryan, 7701 E. Osborn, spoke on behalf of the Bike, Blade, and Board Coalition. He listed what he felt were problems with the skate park in El Dorado as: 1) it does not allow BMX bicycle use, 2) it lacks good flow characteristics, and 3) it is grossly overcrowded.

Nona Oliver, 6908 E. Portland, expressed her belief that the park would be good for everyone. She urged everyone to come together and bring this issue to a close.

Arlene Crevier, 11022 E. Evans Road, explained that her family is interested in the pool and skate park. She stressed her support for the facilities at the proposed McDowell Mountain Ranch site.

Jody Bergdoll, 10406 E. Tierra Buena Lane, explained that he is a sixth grader at Copper Ridge Middle School. He stated his belief that the area needs a skate park in addition to the aquatic center to provide a safe place for children to go. He felt that building the amenities on the proposed site would ensure that the city meets the needs of families in the community.

Larry Heath, 8608 E. Gail Road, stated that he lives close to Cactus Park and can never remember being inconvenienced by traffic due to the pool on the site. He expressed his belief that the city must step up and provide amenities to the citizens. The city does not have enough parks; therefore, it is time to move forward.

Greg Plank, P.O. Box 12021, explained that he is originally from Illinois where they built communities around pools. Despite this, there were still numerous complaints from residents living around the pool. He stated that there isn't any way to please everyone. He stressed that moving the facilities to DC Ranch would simply upset residents in that community. He stated his belief that the park should be built at the McDowell Mountain Ranch site.

Bill Bergdoll, 10406 E. Tierra Buena Lane, explained that he lives in McDowell Mountain Ranch and was informed of the proposed facility when he purchased his home. He recited the history of the project, while stressing that the facility has went through an incredible amount of review. He stated that Option B

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should be approved since it would implement the General Plan open space and recreational elements. He stressed that the facility would be located a distance from existing homes and would fit into the city's trail system. He further addressed all the issues that had been previously sited and urged Council to approve Option B.

James Duchene, 10474 E. Raintree Drive, expressed concern that the project's delay might be sending the message that local opposition groups can derail any project. He urged Council to support Option B to show people that, in the future, only reasonable concerns will be addressed.

Donn Loper, 10761 E. Laurel Lane, stated his opinion that the plan that is being considered tonight is a much better plan than was originally considered. He felt that this issue is a community issue not a development issue. He expressed his belief that Option B should be approved and pointed out that the facilities would be placed on city owned land. He urged Council to send a strong message of support to staff, commissions, and citizens who voted in favor of this site.

Cathy Mangels, 10940 E. Cosmos Circle, spoke in support of the aquatic center. She explained that she was excited about the proposed facility when she moved into the area. She urged Council to vote for the aquatic center and move forward.

Gary Neiss, 16488 N. 106th Place, listed several reasons why he felt the park should be placed at McDowell Mountain Ranch, while stressing that the park is needed. He encouraged Council to support the facility at McDowell Mountain Ranch.

Nick Luongo, 9442 E. Rockwood Drive, opposed the aquatic center at the alternative DC Ranch site.

Arthur Mones, 15050 N. Thompson Peak Parkway, explained that some of the support groups of the facility are indifferent to the location. He noted that the Heritage Foundation grant money is not contingent on the location. He stressed that the out reach process for an alternative site could be conducted expediently and further listed the various reasons he felt the amenities should be located at an alternative site.

David Madisow, 10447 E. Texas Sage, explained that the Loop Road has been presented as the solution to the traffic problems at the proposed site. He expressed his opinion that the road might be abandoned at a later time as unfeasible. He stated his belief that there is insufficient room to construct the road, drainage issues are present, and traffic mitigation would need to be completed for the facility at this site. He felt that the cost for the facility would escalate dramatically on the McDowell Mountain Ranch site.

Maggie Graves, (no address given), urged Council to relocate the aquatic park to an alternative site. She noted that she didn't know about the proposed park when she purchased her home in the area. She stressed that the McDowell Mountain Ranch area is currently at capacity; therefore, the facility should be placed at an alternative site. She urged Council not to base their vote on vague drawings since Council has other options.

Angela Kosina, 11045 E. Raintree Drive, opposed the McDowell Mountain Ranch site since she felt the site would be unsafe. She urged Council not to build the center next to the school. She explained that she has never seen the officer at the school although her three children have attended Desert Canyon.

Beverly Ricketts, 10663 E. Autumn Sage Drive, expressed concern over the proposed McDowell Mountain Ranch site. She asked Council to focus on the fact that children of middle school age are not old enough to be responsible for their safety.

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Peter Ranke, 11109 E. Cosmos Drive, opposed the park at McDowell Mountain Ranch. He felt there is a major issue with traffic at this location. He stressed that approval of Option B would bring more traffic into an already congested area.

Mayor Manross closed public comment. An additional 55 cards were received from citizens in favor of Option B with 4 cards from citizens opposing it, although, they didn't wish to speak.

In response to questions voiced by Councilman Silverman and Littlefield, staff provided the following information.

- 1) Mr. Little explained that the traffic study took projected growth into account plus added an additional 10,000 trips per day to ensure that the roadway system could handle the increased traffic.
- 2) Mr. Little stated that the drainage issues on the site would be handled by grading. The Loop Road would be designed and engineered as a result of both a grading and drainage plan.
- 3) Mr. Exham explained that if Council approves Option B on McDowell Mountain Ranch, the pool and skateboard facilities could be completed by the fall of 2005. If Council desires an alternative site, a new public process would need to be conducted, which would take a significant amount of additional time.
- 4) Ms. Dolan estimated the annual operating costs for the facility at \$560,000.
- 5) Attorney Pennartz explained that, in addition to the contract between the home buyer and the builder, there is also a subdivision report that the State Real Estate Department requires to identify surrounding amenities or public projects. Issues nearby that might affect a buyer are the sub divider's responsibility to disclose.
- 6) Ms. Dolan explained that staff became aware that the developer of DC Ranch was growing concerned about their role in the process approximately 2-3 weeks ago. It wasn't confirmed to staff until Friday of last week.
- 7) Ms. Dolan confirmed that Council could still decide to place the facility at DC Ranch since it is a public park and ultimately, Council's decision.

Councilman Ortega clarified that the city has two types of parks including a neighborhood or pocket park and a more public park. He pointed out that the park being considered tonight is a substantial downsizing of the original plan.

Councilman Ecton explained that the savings suggested by Option A wouldn't be realized since the aquatic center would be built at an alternative location. Mr. Exham addressed the issue of costs associated with the proposed facility. He explained that the city's engineers and designer estimates the cost of building the aquatic center at around \$10 million. He clarified that the money the city has in the proposed budget would cover the entire project.

In response to questions from Vice Mayor O'Hearn, Mr. Little explained that the proposed two-lane loop road would have a speed limit of 15 miles per hour. The road would not be designed for large trucks or buses. Buses that would access the school site would use the signalized intersection at 107th. A deceleration opportunity would be provided for traffic traveling south on Thompson Peak Parkway.

Mr. Little assured Vice Mayor O'Hearn that the traffic projections for the McDowell Mountain Ranch area have been loaded into the computer model to ensure that there are no unusual traffic problems that would cause safety issues. He cautioned everyone not to lose sight of the fact that there are challenging transportation issues for the area as well as solutions.

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Councilwoman Lukas acknowledged that this process has been lengthy and has divided the McDowell Mountain Ranch neighborhood. She stated that she has met equally with both sides of the issue and kept an open mind, while never doubting that the facility is needed. She explained that there is a concentration of youth in the area, the land is dedicated, there is existing infrastructure, and there was a bond election in which voters supported the facility. She noted that the peak use for the aquatic facility would not occur at the same time as the school peak use. She stressed that there isn't a viable alternative site available for the amenities. Although the site isn't perfect, it is reasonable, viable, and it will work. She urged everyone to accept whatever decision Council makes and heal the division that has divided the neighborhood.

Councilman Ortega noted that the case began in 1994. Today, Council is looking at an amended site plan with many improvements. He recited the history of the Bond 2000 and the improvements that would be made in various parts of the city due to the bond. He felt it is very important to keep amenities and schools together. He stated his belief that every area should carry its share of the load to provide citizens with amenities.

Councilman Silverman explained that he has not taken this decision lightly. He stated that it has been proven that schools and parks work together. Major changes have been made to help the neighbors since the proposed park was announced.

Mayor Manross pointed out that she lives close to a school that is close to a park. She stated her belief that it is a benefit to have the facilities close to each other. She thanked everyone for participating in the process.

COUNCILWOMAN LUKAS MOVED TO APPROVE OPTION B FOR A REVISED MUNICIPAL USE MASTER SITE PLAN FOR 40+/- ACRES LOCATED AT THE SOUTHEAST CORNER OF THOMPSON PEAK PARKWAY AND MCDOWELL MOUNTAIN RANCH ROAD. CASE 20-UP-1994#2. COUNCILMAN ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

Public Comment - None

City Manager's Report - None

Mayor and Council Items - None

Adjournment

With no further business to discuss, Mayor Manross adjourned the meeting at 9:30 P.M.

SUBMITTED BY:


Ann Eyerly, Council Recorder

REVIEWED BY:


Sonia Robertson, City Clerk


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CERTIFICATE

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 17th day of March 2003.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 22nd day of March 2003.


SONIA ROBERTSON
City Clerk

To: Mayor Manross & City Council Members
All Board and Commission Members

From: Daniel Basinger, Chairman
Environmental Quality Advisory Board

Re: Invitation and Challenge for April 26th,
Adopt-a Road Scottsdale Clean & Scenic

Date: 17 March, 2003

Dear Mayor Manross, City Council Members, fellow Board and Commission Members,

As you know, Earth Day occurs on April 24th. The Environmental Quality Advisory Board [EQAB] celebrates Earth Day by promoting environmental stewardship all month long. This year, EQAB is highlighting several events that the City has planned to take Earth Day a step further.

Residents are invited to join forces with the City to take part in what we now call - *Scottsdale Clean & Beautiful Month*. Each week during the month of April, our City is coordinating projects that will focus on improving the appearance, vitality and economic integrity of Scottsdale.

Wrapping up the month's events is *Adopt-a Road ~ Scottsdale Clean & Scenic* on Saturday, April 26th. EQAB and Scottsdale Pride members will be picking up litter along Cactus Road between 104th Street and the Loop 101 the morning of that day.

In light of our efforts, we would like to take this opportunity to challenge all City Council members as well as all Board and Commission members to take part in *Adopt-a Road ~ Scottsdale Clean & Scenic* day. The following is your official "challenge":

Challenge

I formally request that all City Council members, Board and Commission members agendaize *Adopt-a Road ~ Scottsdale Clean & Scenic* day at their next meeting. I challenge the Council members and all Board/Commission members to join EQAB and Scottsdale Pride to either temporarily adopt an "orphaned" section of road or join another citizens group in an effort to help make Scottsdale even more beautiful. You may find that this would be a good opportunity for your families to get involved as well. Please confirm your participation with Decima Sever, City of Scottsdale Citizen Liaison at (480) 312-4126.

In addition, if you would like more information about all the *Scottsdale Clean & Beautiful Month* events, please see the attached flyer.

Thank you in advance for your timely consideration and affirmative action on this matter.

For EQAB and Scottsdale Pride,

Daniel Basinger

Daniel Basinger
Chairman, EQAB

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MINUTES
SCOTTSDALE CITY COUNCIL
CITY COUNCIL MEETING
Tuesday, March 18, 2003

**The Kiva
City Hall
Scottsdale, Arizona**

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**MINUTES
SCOTTSDALE CITY COUNCIL
CITY COUNCIL MEETING
Tuesday, March 18, 2003**

CALL TO ORDER (IN CITY HALL KIVA FORUM)

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Tuesday, March 18, 2003 in the Kiva, City Hall, at 5:07 P.M.

ROLL CALL

Present: Mayor Mary Manross
Vice Mayor Ned O'Hearn
Council Members David Ortega, Tom Silverman, Robert Littlefield,
Wayne Ecton, and Cynthia Lukas

Also Present: City Manager Jan Dolan
City Attorney David Pennartz
Deputy City Clerk Carolyn Jagger

Public Comment

Nellie Schwartz, 8641 E. Cambridge, explained that she attended some of the public meetings that were held to solicit public input from neighbors on the type of development they wished to see on the former Smitty's site. She noted that just about every citizen in attendance requested senior housing and Lubby's Cafeteria to be placed on the site. She explained that she was very disturbed that the approved plan would place 3-story condos on the site. She urged Council to negotiate with Trend Homes to revise the plan to include senior housing and landscaping.

Jodi Paulsen, 8630 E. Dianna, explained that the neighborhood is fearful of the current Trend proposal for the former Smitty's site due to maintenance issues. She stated that the reduced interest rates enticed people to purchase property in the neighborhood who have not maintained their property. She felt the Trend plan would promote further deterioration of the area.

Carol Papalas-Sams, 720 N. 82nd Street, #E108, spoke as a representation for the Coalition for a Better Scottsdale, which is being organized as a watchdog organization. She explained that she believes the developer and concept that was selected for the former Smitty's site was not right for the area. She noted that she would like to see senior rentals built on the site.

Debbie Andrade, 3707 N. Hayden Road, expressed her desire to see senior housing on the former Smitty's site. She stated her desire to see the best plan the city can get on the site and questioned why Council doesn't support the same.

Minutes

REGULAR MEETINGS

Tuesday, February 18, 2003

SPECIAL MEETINGS

Tuesday, February 25, 2003

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COUNCILMAN ORTEGA MOVED TO APPROVE REGULAR MINUTES FOR TUESDAY, FEBRUARY 18, 2003 AND SPECIAL MINUTES FOR TUESDAY, FEBRUARY 25, 2003. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 7/0.

CONSENT AGENDA

1. **Whiskey Creek Steakhouse Liquor License**
Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for an existing restaurant location.
Location: 3636 N Scottsdale Rd
Reference: 10-LL-2003
Staff Contact(s): Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619, jefisher@ScottsdaleAZ.gov
2. **Tuscany McCormick Ranch Liquor License**
Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a new series 12 (restaurant) State liquor license located within a luxury retirement community.
Location: 9000 E San Victor Dr Unit 313
Reference: 11-LL-2003
Staff Contact(s): Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619, jefisher@ScottsdaleAZ.gov
3. **Sundays Liquor License**
Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license. This request is the result of a change in ownership.
Location: 4432 N Miller Rd
Reference: 12-LL-2003
Staff Contact(s): Jeff Fisher, Plan and Permit Services Interim Director, 480-312-7619, jefisher@ScottsdaleAZ.gov
4. **Health South Abandonment**
Request: Abandon a 50 feet public right-of-way along 96th Place.
Location: 9623 E Clinton Av
Reference: 10-AB-2002
Staff Contacts: Pete Deeley, Project Coordination Manager, 480-312-2554, pdeeley@ScottsdaleAZ.gov
5. **Boulder Mountain Estates Zoning Adoption**
Request: Zoning adoption of case 20-ZN-1986, Ordinance No. 3495
Location: 118th Street and Happy Valley Road
Reference: 20-ZN-1986#2
Staff Contacts: Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@ScottsdaleAZ.gov

DRAFT

6. City of Scottsdale's Support for continued funding of the Arizona Office of Tourism

Request: At the request of Councilman Ecton, the Council is asked to approve Resolution No. 6277 asking the Governor and the State Legislature to continue to support and fund the Arizona Office of Tourism, in recognition of the Tourism Industry's significant positive economic impact on the economy of the State of Arizona and on the City of Scottsdale.

Staff Contact(s): Kathy Carlisle O'Connor, Tourism Development Manager, (480) 312.7057, (480) 312-2672 (Fax), kcoconnor@scottsdaleAZ.gov

7. Mexican Consular Identification Cards/Matricula de Identidad Consular

Request: This item is for City Council consideration of Resolution No. 6276, to confirm and authorize the acceptance of Mexican Consular Identification Cards (also known as Matricula de Identidad Consular) and equivalent identification cards issued by other countries as a recognized form of identification to obtain City services. East Valley Interfaith has requested the City Council take formal, affirmative action to authorize the acceptance of these ID cards.

Staff Contacts: David Pennartz, City Attorney, 480-312-2405, dpennartz@ScottsdaleAZ.gov; Don Logan, Diversity Officer, 480-312-7738; and Natalie Lewis, Asst. to City Manager, 480-312-78-6, nlewis@ScottsdaleAZ.gov

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E. Palm Lane, questioned why the city would place this item on consent agenda for approval. He wondered why the city would consider making it easier for illegal immigrants to receive more city services especially considering the current economic climate.

Dick White, 10815 N. 84th Street, spoke as a representative for St. Patrick's Catholic Community. He explained that the card is issued in this country and has 22 security measures built into it. It is issued to residents of Mexico who live in the United States. He stated his belief that this is an issue of great importance.

Mayor Manross closed public testimony.

8. City of Scottsdale adv. Allied Construction, Inc.

Request: Adopt Resolution No. 6272 authorizing the City Attorney to renew Contract No. 2000-160A-COS, and Authorize renewal of Contract No. 2000-160A-COS in a maximum amount of Thirty-five Thousand Dollars (\$35,000) with Holden Brodman PLC for legal services in connection with the dispute among the City of Scottsdale, Allied Construction, Inc., and the City's engineer, Cella Barr Associates, relating to construction at McCormick Ranch Railroad Park.

Staff Contact(s): Steven Bennett, Deputy City Attorney, 480-312-2405, sbennett@scottsdaleaz.gov;

David A. Pennartz, City Attorney, 480-312-2405, dpennartz@scottsdaleaz.gov

9. Overtime Funding in Police, Water Resources and Municipal Services Departments

Request: The Police Department is requesting City Council approval to use \$300,000 of department operating budget savings and a budget transfer of \$845,660 from

DRAFT

Operating Contingency (100-99501-52890) to cover overtime expenses through the end of the fiscal year.

The Water Resources Department is requesting City Council approval to use \$126,968 of department operating budget savings to cover estimated overtime expenses through the end of the fiscal year.

The Municipal Services Department is requesting City Council approval to use \$55,000 of department operating budget savings to cover estimated overtime expenses through the end of the fiscal year.

The combined request of all three departments is \$1,327,628, of which \$481,968 is from department savings and \$845,660 is from the City's Operating Contingency Fund.

Related Policies, References: Administrative Regulation 354: Overtime Management and Utilization.

Staff Contact(s): Roger Klingler, Assistant City Manager, 312-5830, rklingler@scottsdaleaz.gov; Alan Rodbell, Police Chief, 312-5320, arodbell@scottsdaleaz.gov; David Mansfield, Water Resources General Manager, 312-5681, dmansfield@scottsdaleaz.gov; Al Dreska, Municipal Services General Manager, 312-5555, adreska@scottsdaleaz.gov; Neal Shearer, Human Resources General Manager, 312-2604, nshearer@scottsdaleaz.gov

COUNCILMAN ORTEGA MOVED TO APPROVE CONSENT ITEMS 1-9. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

REGULAR AGENDA

10. Public Hearing for Adjustment of Water, Water Resources and Sewer Development Fees

Request: Conduct a Public Hearing and accept citizen comments on City's intention to adjust Water Development, Water Resources Development and Sewer Development Fees with a construction cost index increase of 2.4% effective July 1, 2003.

Staff Contact(s): David M. Mansfield, Water Resources General Manager (480)-312-5681, dmansfield@ScottsdaleAz.gov

Assistant City Manager Roger Klingler introduced this item with a brief slide presentation, which has been outlined below.

Water, Sewer & Water Resources Development Fees
FY 2003/04
Scottsdale City Council - Public Hearing
March 18, 2003

What Are Development Fees?

One-time fees from new development to pay its proportionate share of infrastructure costs.

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Arizona Statutes – Development Fees Update Process

Adoption Procedure

- New/Increase Fees Report
- Report Posted / Notice of Intent- 60 days Prior to Public Hearing (Jan. 13)
- Public Hearing (March 18)
- Adoption – 14 Days After Public Hearing (April 1)
- Effective – 90 Days After Adoption (July 1)

Development Fee Chronology

- 1997 Tischler Study Fee Impl.
- 1997 Master Plan
- 1998 Comprehensive Fee Update
- 1999 Fee Adj. – 3.1% Constr. Index
- 1999 Master Plan
- 2000 Comprehensive Fee Update
- 2001 Fee Adj. – 3.6% Constr. Index
- 2001 Master Plan
- 2002 Comprehensive Fee Update
- 2003 Fee Adj. – 2.4% Constr. Index

What Do Development Fees Pay For?

Water Development

- Water Lines
- Pump Stations
- Treatment Plants
- Reservoirs
- Wells

Sewer Development

- Sewer Lines
- Lift Stations
- Treatment Plants

Water Resource Development

- CAP Water Leases
- Other CAP Rights
- Recharge

How Development Fees Are Determined

New Capital Costs + Existing System Value

÷

System Capacity to Meet Demand

=

Net Capital Cost Per Gallon (CPG)

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CPG X Gallons of Demand = Development Fee

2003 Development Fees (capital cost per gallon)

	A	B-E
Water Development	\$1. 52	\$ 7.34
Sewer Development	\$7. 93	\$24.48
Water Resources	\$1.55	\$ 2.00
Effective 7/1/03		

Existing & Proposed Development Fees*

1 Acre Residential Lot – Zones B-E*

Existing	Proposed	Difference
\$11,812	\$12,097	\$285

*Includes Residential Administrative fee of 0.46%

**Development Fee Revenues
 Jan 1997 thru Jan 2003
 \$ in Millions**

	Water	Sewer	Water Resources
Zone A	\$ 1.4	\$ 3.0	\$ 2.1
Zones B-E	\$55.5	\$65.1	\$22.1
Total	\$56.9	\$68.1	\$24.2

Update Schedule

- Jan. 13 –
- Intent Notice Published
- Report Posted
- Mar. 18 – Public Hearing
- Apr. 1 – Adjusted Fees - Adoption
- Jul. 1 – Adjusted Fees - Effective

Mr. Klingler confirmed for Vice Mayor O'Hearn that the fees cover the cost for infrastructure. Ms. Dolan clarified that the fees would cover the cost of water and sewer for new development.

In response to questions from Councilman Ortega, Mr. Klingler explained that arsenic treatment is required for wells throughout the city. He confirmed that some of the existing facilities would be improved to meet the new Federal regulations although only the costs associated with new facilities would be funded through development fees. Ms. Dolan clarified that the city doesn't determine operating rates based on zones.

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Mayor Manross opened public testimony. No comment cards were received. Mayor Manross closed public testimony.

11. Foothills Overlay Zoning

Request:

1. Apply Foothills Overlay (FO) zoning to the 10+/- square miles known as the Desert Foothills area, generally located between 56th and 96th Streets, from Happy Valley to Ashler Hills Roads.
2. Adopt Ordinance No. 3498 affirming the above rezoning.

Location: Desert Foothills

Reference: 25-ZN-2002

Staff Contact(s): Jerry Stabley, Senior Development Planner, 480-312-7872, jstabley@ScottsdaleAZ.gov

Randy Grant introduced item 11 for discussion. His presentation and comments have been summarized below.

**Rezoning of Properties to Apply the Foothills Overlay
25-ZN-2002**

Background

- 1999 - Desert Foothills Character Area Plan
- 2001 - Creation of Foothills Overlay District and Ordinance Text
- Current - Proposed Rezoning of Properties to Foothills Overlay

The area is bounded generally by the Scottsdale/Phoenix boundary on the west, Happy Valley on the south, Pima on the East, and Lone Mountain on the north. Just for background, in 1999 a group of residents of the Desert Foothills area worked with staff to create the Desert Foothills Character Area plan, which included a new overlay-zoning district, the Foothills Overlay. The text for the zoning district was adopted in 2001, but the zoning was not applied to any specific properties.

Proposed Action

■ Existing Condition:

—Base Zoning:

❖ R1-43, R1-70, R1-190

—ESL Overlay (134 sq. miles)

■ Request - Apply additional overlay (Foothills Overlay) to 10 square miles

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Overlay Goal

- Maintain rural desert equestrian character
- Apply additional standards to recognize and protect the area's unique character
- Better blend buildings into the desert environment
- Require greater distances between buildings

The primary goal of the Overlay was to maintain the character that exists in this part of the community – rural residential and equestrian uses. This would be accomplished by requiring additional standards for development within this area. Instead of the general zoning requirements that are required for development anywhere in the city, the Overlay standards are designed to recognize and protect the character that is unique to the Desert Foothills area.

Overlay will change regulations for:

- Building Heights
- Accessory Buildings
- Walls
- Outdoor Lighting

The differences can be categorized into four areas: Building Heights, Accessory Buildings, Walls, and Outdoor Lighting.

Changes to: Building Heights

Existing Regulations:

30 Feet (underlying district)

26 Feet (ESLO)

Foothills Overlay:

Buildings in general - 24 Feet

Institutional, public buildings to 40 feet if more than 10 acres

Maintaining building heights that blend with the land is one of the highest priorities for residents in this area. The current underlying zoning (R1-43, for example), allows building heights of up to 30'. ESLO, which is an overlay over the base zoning, restricts buildings in residential districts to 26'. The Foothills Overlay proposes to restrict buildings to 24', except public and institutional buildings which can achieve greater height if the property size is more than 10 acres. On less than 10 acres, these uses would be restricted to 24' as well.

Changes to: Accessory Buildings

Reduction in Max. Lot Coverage (R1-43)

Existing Regulations: 12,000 Sq. Ft.

Foothills Overlay: 8,000 Sq. Ft.

Increase in Setbacks (R1-43)

Existing Regulations: 2 Feet

Foothills Overlay:

5 Feet

40 feet to home on adjacent lot

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The Overlay would also change the maximum amount of the lot that can be covered by buildings or development. As an example, on a 43,000 square foot property, a maximum of 8,000 square feet could be covered by accessory buildings (for various sizes of properties the max. amount of coverage changes, but the principle applies to all properties). Under the base zoning, 12,000 square feet could be covered. Additionally, there are increases in setbacks that would be required.

Changes to: Walls

■ Heights of Perimeter Walls (On Property Lines in all Districts)

- Existing Regulations: 8 Feet
- Foothills Overlay: 6 Feet

■ Max. Area Enclosed by Walls (R1-43)

- Existing Regulations: 75%
- Foothills Overlay: 60%

Changes to: Outdoor Lighting

■ Existing Regulations:

- 20 Feet
- Foothills Overlay (All Districts):
- 16 Feet

Community Involvement

- 1500 property owners notified
- Three Open Houses
- 65 Attended
- Numerous Phone Calls

Key Issue from Planning Commission Hearing

- Should current development standards be grandfathered for existing subdivisions?
There are 13 different subdivisions in the area.

- 3 Citizen comments
- Special Exceptions may be granted only if substantial improvements and/or significant natural features exist
- ❖ DRB up to 25%, CC over 25%

Key Issue: Existing Subdivisions

- Restrictive standards
- One story
- 75% built out
- Checkerboard pattern
- DRB

Staff evaluated the impact on existing subdivisions within the Overlay, and found that most of the subdivisions have private restrictions more stringent than what is being proposed, most existing buildings are one-story, about 75% of the lots within the subdivisions are already built

out. The reason that the zoning is being applied to all properties within the area is to avoid a checkerboard pattern of development standards.

Key Issues

How do we address inconsistencies between the underlying zoning, ESL and Foothills Overlay?
Should Churches and Institutional Uses be restricted to 24', 26', 30'/45' in height?
ESL Amendment will address these issues.

Mr. Grant explained that there is a specific provision that allows for special exceptions.

Recommendation

Approve Rezoning for all Properties in the Foothills Overlay
Planning Commission: 4-2 vote
Staff Recommendation

Grandfathering Options for Subdivisions

Developed Lots

Allows homeowners to make changes to homes using the rules the home was built under
Limits somewhat the effectiveness of the overlay

Undeveloped Lots

Allows property owners to build using the same standards of existing homes in the subdivision
Limits the effectiveness of the overlay, especially at the edges of the subdivisions

Key Issue:

Consistency with ESL

Combination of underlying residential zoning, ESL and F-O creates inconsistencies

Current ESL Language

"In the event of a conflict between the ESL and any other provision of the Zoning Ordinance, the ESL regulation shall prevail."

Proposed ESL Amendment for 4/1 Hearing:

"In the event of a conflict between the ESL and any other provision of the Zoning Ordinance, the more restrictive provision shall prevail."

Mr. Grant confirmed that staff would be bringing back alternatives on the unresolved issues as outlined in the presentation for Council's consideration.

Councilman Ortega noted that the state is the largest property owner in the area and questioned the state's reaction to the proposed overlay. Mr. Grant explained that staff notified the state of the proposed overlay. He stated that their position is that they won't take a position on the request.

Mayor Manross opened public testimony.

Les Conklin, 27221 N. 71st Place, explained that he owns a home and vacant lot in the area that would be impacted by the overlay. He stated his support of the overlay since he felt it is needed to protect the area. He expressed his belief that if the city begins making exceptions to the overlay, the intent would be lost. He urged Council to support the overlay.

W. Roy Slaunwhite, 27243 N. 71st Place, requested clarification as to whether the overlay would impact existing buildings. He also wondered what would happen if a resident wished to modify an existing building or wall.

Mr. Grant explained that the overlay would relate to new construction; therefore, existing structures would be not be impacted. He stated that maintenance could be performed on an existing building or wall without conforming to the new ordinance. There is a specific provision in the new ordinance that allows for an exception in the event that there are natural features or existing development. The DRB could allow for these special exceptions up to 25% of the development standards as long as the exception doesn't exceed the standards of the underlying district.

Jeff Nelson, 13123 N. 103rd Street, spoke as the pastor of Redeemer Lutheran Church. The congregation of the church believes that the church would be negatively impacted by the current overlay proposal. He urged Council to enact a grandfather text amendment before applying the overlay ordinance. He cited the Religious Land Use and Institutionalized Persons Act of 2000 and explained his belief that this overlay is not a compelling government interest so would not be an exemption from federal regulation.

In response to questions from Mayor Manross, Pastor Nelson explained that his congregation is concerned that if they add a building, they would need to paint all the buildings in order to make them look right due to the new color restrictions.

Attorney Pennartz explained that there is a provision for special exceptions in circumstances that might apply in this case. Without having an application, staff cannot really comment on it. In terms of the Federal Act, it would apply to any existing ordinance the city has of a land use nature that the city may or may not, under certain circumstances, make an accommodation for religious use.

Harmon Anderson, 8556 E. Appaloosa, explained that, generally speaking, he is not supportive of the proposed ordinance. He questioned how the boundaries were determined for the overlay. He requested that Council consider a carefully crafted grandfather clause before adopting the ordinance.

In response to questions from Councilman Ortega and Vice Mayor O'Hearn, Mr. Grant explained that in the event that a detailed Master Plan was approved for the property by the DRB (Development Review Board) that showed additional future buildings, there would be a compelling argument that the approval by the city should be respected under a grandfather situation.

Wolfgang H. Stobbe, 8250 E. Bronco Trail, explained that he likes and appreciates the way the northern part of the city tries to preserve as much of the desert as possible. He stated his support of any additional assistance by the city to keep this process alive. He expressed great concern, however, over the missing grandfather clause that should be incorporated in such an important ordinance. He urged Council to reject the text until the clause could be added.

Wayne Anderson, 7419 E. Buena Terra Way, stated that many residents urged the Planning Commission to add a grandfather clause to no avail. He questioned why the Planning Commission ignored the requests from citizens. He stressed his belief that a grandfather clause similar to the clause in the ESL must be included in this ordinance.

Jacqueline Jones, 26603 N. 70th Place, questioned who the ordinance serves and how the boundaries were determined. She stated her belief that the ESL is sufficient to protect the area. She didn't feel there is any need for another blanket law on property.

Tom Zirber, 27224 N. 71st Place, expressed surprise with the explanations presented tonight. He stated his belief that there should be a specific grandfather clause included in the ordinance.

Howard Myers, 6631 E. Horned Owl Trail, explained that he represents the Desert Property Owner's Association, which is happy to see this ordinance being considered. He pointed out that this has been a six-year citizen-driven effort, not staff driven. Representatives from all types of properties participated in the process to compile the ordinance. He stressed that the overlay needs to be applied to new development in order to be effective.

John Vipond, 26643 N. 71st Place, expressed concerns about the proposed restrictions. He recommended that Council vote against the ordinance and consider adding a grandfather clause. He stated his belief that this ordinance would restrict his rights and ability to develop his property as he desires.

Tony Nelssen, 7736 E. Redbird, explained that the reason he didn't want to change his motion during the Planning Commission meeting was because the grandfather clause was in the ordinance. He stated that he has a two-story home that is only 22' high so he didn't believe the height restriction is an undue burden. He asked Council to consider the citizens who have worked on the ordinance over the years. He noted that the ordinance represents a compromise in many areas. He urged Council to approve the ordinance.

Mayor Manross closed public testimony. Two additional cards were received in favor and one card was received opposing the ordinance from citizens not wishing to speak.

In response to questions from Councilwoman Lukas, Mr. Grant explained that any time an ordinance changes, there is likely to be some properties that were developed under the previous ordinance that would be grandfathered in. The grandfathering provision actually contained in the zoning ordinance is not specific to the overlay. He explained that the structures that are built on the property would be non-conforming if they didn't comply with the new requirements.

Attorney Pennartz explained that lawyers use the term legal non-conforming. It is simply another way of saying that the items would be grandfathered.

Mr. Grant clarified for Council that the boundary was created as a function of character area and was determined as part of the citizen involved process. City Attorney Pennartz explained that it is really up to Council to determine if the recommended boundary is appropriate or if Council wishes to change it in the future.

In response to questions from Councilman Ortega, Mr. Grant explained that most of the subdivisions in the impacted area were platted prior to ESL (Environmentally Sensitive Land) so they would not have NAOS (Natural Area Open Space) dedicated on them unless they came in for subsequent approval. He pointed out that the Foothills Overlay being considered tonight doesn't have a grandfather clause in it because the default would revert back to the existing basic zoning ordinance.

Mr. Grant confirmed for Mayor Manross that amended development standards that constitute a legal contract would take precedence over the overlay.

Attorney Pennartz provided assurances for Councilman Littlefield that it is his belief that the ordinance would not violate federal law. The law relates to how an ordinance is applied not to how it is written.

Councilman Ecton expressed his opinion that the overlay sounds fair and has been developed over a long period of time with a significant amount of public input. He felt it would be a positive step in preserving the character of the area.

After further discussion, Council agreed to direct staff to provide a report to Council in 18 months on the impacts of the ordinance on the area.

COUNCILMAN ECTON MOVED TO APPLY FOOTHILLS OVERLAY (FO) ZONING TO THE 10+/- SQUARE MILES KNOWN AS THE DESERT FOOTHILLS AREA, GENERALLY LOCATED BETWEEN 56TH AND 96TH STREETS, FROM HAPPY VALLEY TO ASHLER HILLS ROADS AND ADOPT ORDINANCE NO. 3498, OPTION A, AFFIRMING THE ABOVE REZONING. CASE 25-ZN-2002. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

12. Legends of Toscana Rezoning

Request:

1. Rezone from Single Family Residential District (R1-35) to Single Family Residential, Planned Residential District (R1-7, PRD) including amended development standards on a 10 +/- acre parcel located at 12855 N 94th Street.
2. Adopt Ordinance No. 3500 affirming the above rezoning and amended development standards.
3. Adopt Resolution No. 6270 to authorize the Mayor to execute the development agreement No. 2003-044-COS.

Location: 12855 N 94th Street

Reference: 21-ZN-2002

Staff Contact(s): Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@ScottsdaleAZ.gov

Kurt Jones introduced case 21-ZN-2002 as a request to rezone property located at the southeast corner of Sweetwater and 94th Street. The site is surrounded by existing single-family residential homes, is an existing ranch use, and is comprised of approximately 10 acres. Currently, the access to the site is off of 94th Street at the southwest corner. He noted that the site is within the Cactus Corridor Area Study that was approved in 1992. Both the existing use and requested rezoning fall within the suburban designation as indicated by the study.

The proposed site plan is to utilize the existing access off of 94th Street. The applicant intends to phase the subdivision due to the proposed stipulation and amended development agreement. The city has been working with the applicant to finalize a regional drainage solution on the site. The stipulation would require the dedication of an easement on the northeast corner of the lot and a portion of one of the lots.

Mr. Jones presented a brief slide presentation, which has been outlined below.

Project Impacts

- Traffic/ Existing streets
- Drainage considerations
- Existing water and sewer lines
- No Police/Fire service impacts
- School Impacts: Nominal – High School
- Community Involvement

Planning Commission Recommendation

Planning Commission recommends approval of the rezoning, subject to the stipulations (4-2)

Discussion:

Compatibility with the area
Drainage – site plan implications

Project Information

Rezoning from R1-35 to R1-7 PRD
Amended Standards
Maximum 30 lots
Phased project
Access from 94th Street
Recreational amenity
15' Landscaping along major streets

Mr. Jones noted that most of the immediate neighborhood supports the proposal; however, there are some concerns that the zoning change would impact the Cactus Corridor.

Andy Abraham, 702 E. Osborne, spoke as a representative of the applicant. He reaffirmed the rezoning request and the location of the site. He stressed that approval of the requested rezoning would allow three houses per acre. He noted that all of the surrounding zoning is equal to or higher in density than what the applicant is requesting. He explained that the request is consistent with the city's General Plan and Cactus Corridor Plan.

Mr. Abraham explained that the development was proposed in phases to allow the city additional time to identify a solution to resolve a regional drainage issue. He stressed that there is no drainage issue created by the project or the site. Through the engineering work that has been completed, it has been determined that the city would receive a dedication (Lot 29, approximately 11,000 sq. ft. and a triangular parcel) through the amended stipulation at no cost to the city.

Mayor Manross opened public comment.

William Guilfoil, 11260 N. 92nd Street, #1047, stated his support of the rezoning and the sale of the property. He stressed that, although he spent approximately \$3,000 trying to sell the property as horse property, no equestrian people came forward to purchase the property.

Susan Wheeler, 9616 E. Kalil Drive, spoke against the rezoning and development of the property. She stressed that approval tonight of the request would make it almost impossible for the rest of the ranches in the Cactus Corridor to remain as ranches. She urged Council to consider their actions carefully.

Jacqueline Reichman, 12926 N. 95th Way, spoke in support of the proposal on behalf of the Sweetwater Ranch Manor II Homeowner's Association. She felt the proposal makes sense due to its location and the residential homes that surround the property. She explained that the proposed lot size seems appropriate for its location.

Tony Nelssen, 7736 E. Redbird Road, reminded Council that they were elected on their slow growth platform. He questioned why the city would allow the density on the property to be increased three fold. He encouraged Council to deny the request.

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Jan Ayres, 9424 E. Corrine Drive, spoke in support of the proposed rezoning.

Richard Kirby Everingham, 12739 N. 95th Place, stated his support of the rezoning. He felt that the requested density is better than the zoning on the existing subdivisions in the area.

Mayor Manross closed public testimony. Seven additional comment cards were received from citizens in favor of the rezoning who did not wish to speak.

Mr. Abraham explained that the case is about the appropriate land use for the location given the surrounding area. He stressed that the request is completely consistent with the Cactus Corridor Plan.

In response to questions from Councilwoman Lukas, Larry Brandon of Legend Development, explained that the solution for the wash would be attractive.

Councilman Littlefield, Ecton, Silverman, and Vice Mayor O'Hearn agreed that the issue with the case is one of density. They stated their reluctance to approve the level of density requested.

Councilman Littlefield added that the Council is either serious about protecting horse property or it isn't.

In response to questions from Councilman Ortega, Mr. Ekblaw explained that the ordinance has a limitation for resubmitting a similar plan, although the Planning Commission can be petitioned by an applicant to reconsider a similar plan.

Councilman Ortega, Councilwoman Lukas, and Mayor Manross all pointed out that the General Plan was approved by the voters and indicated that the parcel could have between 5-7 units per acre. The proposed plan is consistent with the Cactus Corridor Study and the character of the area. They pointed out that there is also overwhelming neighborhood support for the proposal.

VICE MAYOR O'HEARN MOVED TO DENY REZONING FROM SINGLE FAMILY RESIDENTIAL DISTRICT (R1-35) TO SINGLE FAMILY RESIDENTIAL, PLANNED RESIDENTIAL DISTRICT (R1-7, PRD) INCLUDING AMENDED DEVELOPMENT STANDARDS ON A 10 +/- ACRE PARCEL LOCATED AT 12855 N 94TH STREET. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 4/3 (M.M., C.L., D.O.).

Public Comment - None

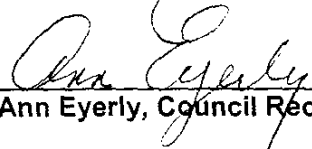
City Manager's Report - None

Mayor and Council Items - None

Adjournment

With no further business to discuss, Mayor Manross adjourned the meeting at 7:55 P.M.

SUBMITTED BY:


Ann Eyerly, Council Recorder

REVIEWED BY:


Carolyn Jagger, Deputy City Clerk

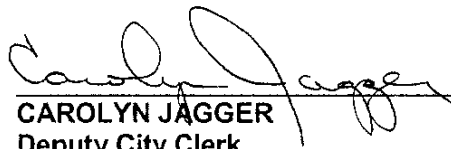
DRAFT

CERTIFICATE

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 18th day of March 2003.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 21st day of March 2003.



CAROLYN JAGGER
Deputy City Clerk

CITY COUNCIL REPORT



MEETING DATE: April 15, 2003

ITEM NO. 1

GOAL: Preserve Character and Environment

SUBJECT

**Bar Liquor License Request for Kit Cat Lounge
8-LL-2003**

REQUEST

To consider forwarding an approval recommendation to the Arizona Department of Liquor Licenses and Control for a person and location transfer for a series 6 (bar) State liquor license for a new bar location.

OWNER

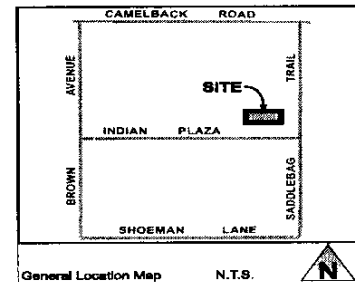
Lucid Entertainment, Inc.

APPLICANT CONTACT

H. Lewkowitz
602-280-1000

LOCATION

4426 N. Saddlebag Trail



BACKGROUND

This site is zoned C-2/P-3/P-2 (Central Business District/Parking District/Passenger Automobile Parking).

This is a person and location transfer for a new bar location.

The distance to the nearest school, Scottsdale United Methodist School is 2,000 ft.

The distance to the nearest church, Scottsdale United Methodist Church, is 2,000 ft.

There are 81 liquor licenses within a one half mile radius of this location.

APPLICANT'S PROPOSAL

Goal/Purpose of Request.

The applicant is seeking a favorable recommendation on a series 6 (bar) liquor license. The applicant has maintained the required posting notice for the State mandated 20-day period.

IMPACT ANALYSIS

Police/Fire. The Police Department has conducted a review of this application and their review comments are attached. The following concerns were noted:

- Background of the sole operating officer
- The following traffic/customer concerns
 - There are concerns about adding another Class 6 liquor establishment in an area congested with other liquor establishments; the Kit Cat Lounge will be immediately adjacent to Axis-Radius, and within a block of Zips on Camelback, Chances Are, Pasta Brioni, Circle K, Budda Bar, Downside Risk Restaurant and Bar, Tequila Grill, Drift, Suede, Sanctuary, Six, Maloney's, Martini Ranch, Buckets, Pearl, Fusion, and Blue Horse Tavern. There are concerns about the patrons, especially in this area congested by heavy traffic during bar hours; emergency personnnel presently have difficulty arriving at the scene of a call in this area. Vehicle traffic is usually bumper-to-bumper within one hour of bar closing, and pedestrian traffic is extremely heavy. Parking is extremely challenging at best, even with four valet operations within one block.

(Continued)

- Calls for service in entertainment district for time period Jan-Dec 2002 (detailed report included as attachment #7):
 - The study shows that there were a total of 9,586 calls for service in the area.
 - 2,524 calls (26%) could be related to the liquor establishments located in the area.
 - 1,123 (44%) resulted in a departmental report being taken.
 - Of the top 20 businesses that received the most calls for service, 7 were liquor establishments.

These trends in the entertainment district will be cause for further policy discussion regarding concentration of liquor establishments in the downtown area. Current police resources can effectively manage the addition of this bar within this area.

Financial Services. Revenue Collection has reported that the applicant has met City licensing requirements and all fees have been paid.

Parking. Planning and Development Services has conducted a review of the parking requirements (details in attachments #4 & #5).

- Parking spaces required by ordinance: 44.34
- Total parking spaces provided: 94.32
 - On-Site: 4
 - Credits: 12.32
 - Remote: 78
- There are 47 remote parking spaces located south of Camelback Road connected to the site by a sidewalk/crosswalk. The 31 remote parking spaces located north of Camelback will be used for employee parking only.

Development Information. This establishment is 2,750 sq. ft. inside and the outdoor patio is 1,320 sq. ft.

Code Enforcement. Code Enforcement has conducted a review and has determined that the applicant is in compliance with the zoning ordinance.

Maricopa County. Maricopa County Environmental Health has reviewed this application and reported no opposition to this case.

Community involvement. Letters of support were received from seventeen (17) neighboring businesses (Attachment #8). No petitions or protests have been filed with the City Clerk during the 20 (twenty) day posting period.

OPTIONS AND STAFF RECOMMENDATION

City Council has the option of recommending approval or denial to the Arizona Department of Liquor Licenses and Control.

Recommended Approach: The review of this application has shown that it meets zoning, parking and public safety requirements. Staff recommends approval.

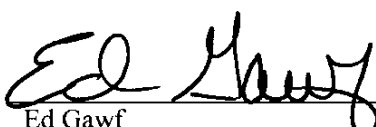
Proposed Next Steps: The City Council's recommendation of approval or denial will be forwarded to the Department of Liquor Licenses and Control for their consideration. If the application is approved, the Department of Liquor Licenses and Control will issue the liquor license after a 15-day waiting period. If the application is denied, the Department of Liquor Licenses and Control will conduct a hearing to determine if this application should be approved or denied.

RESPONSIBLE**DEPT(S)****STAFF CONTACT(S)****Planning and Development Services Department**

Jeff Fisher
Plan Review and Permit Services Director
480-312-7619
E-mail: Jfisher@ScottsdaleAZ.Gov

APPROVED BY

Kroy Ekblaw
Planning and Development Services General Manager

Date

Ed Gawf
Deputy City Manager

Date**ATTACHMENTS**

- #1: Aerial Map
- #2: Vicinity Map
- #3: Graphic- Liquor License locations within ½ mile
- #4: Parking Overview (text)
- #5: Parking Overview (graphic)
- #6: Police Department Review Comments
- #7: Police calls for service in area
- #8: Community Input
- #9: Application



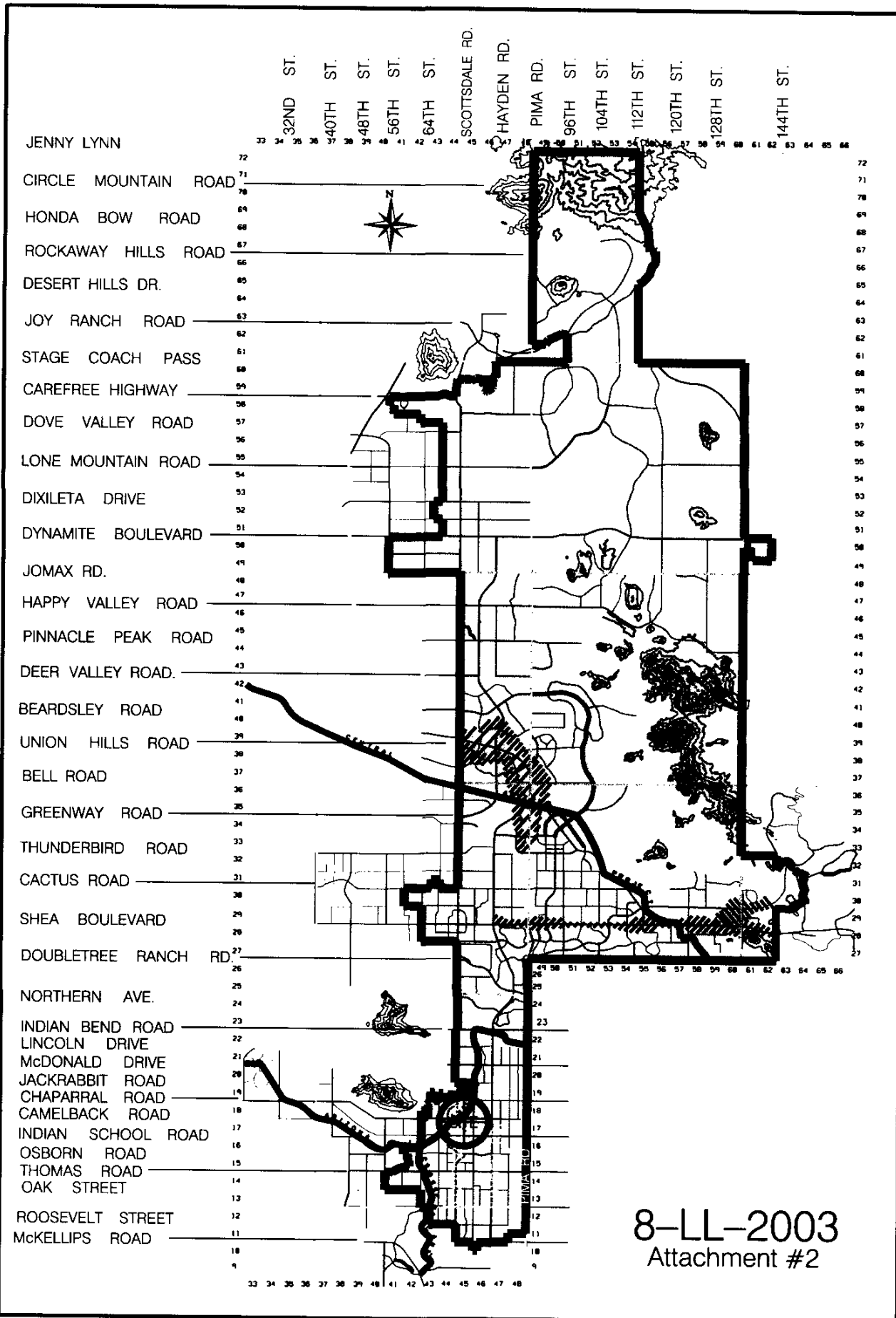
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G.I.S. ORTHOPHOTO 2002

8-LL-2003

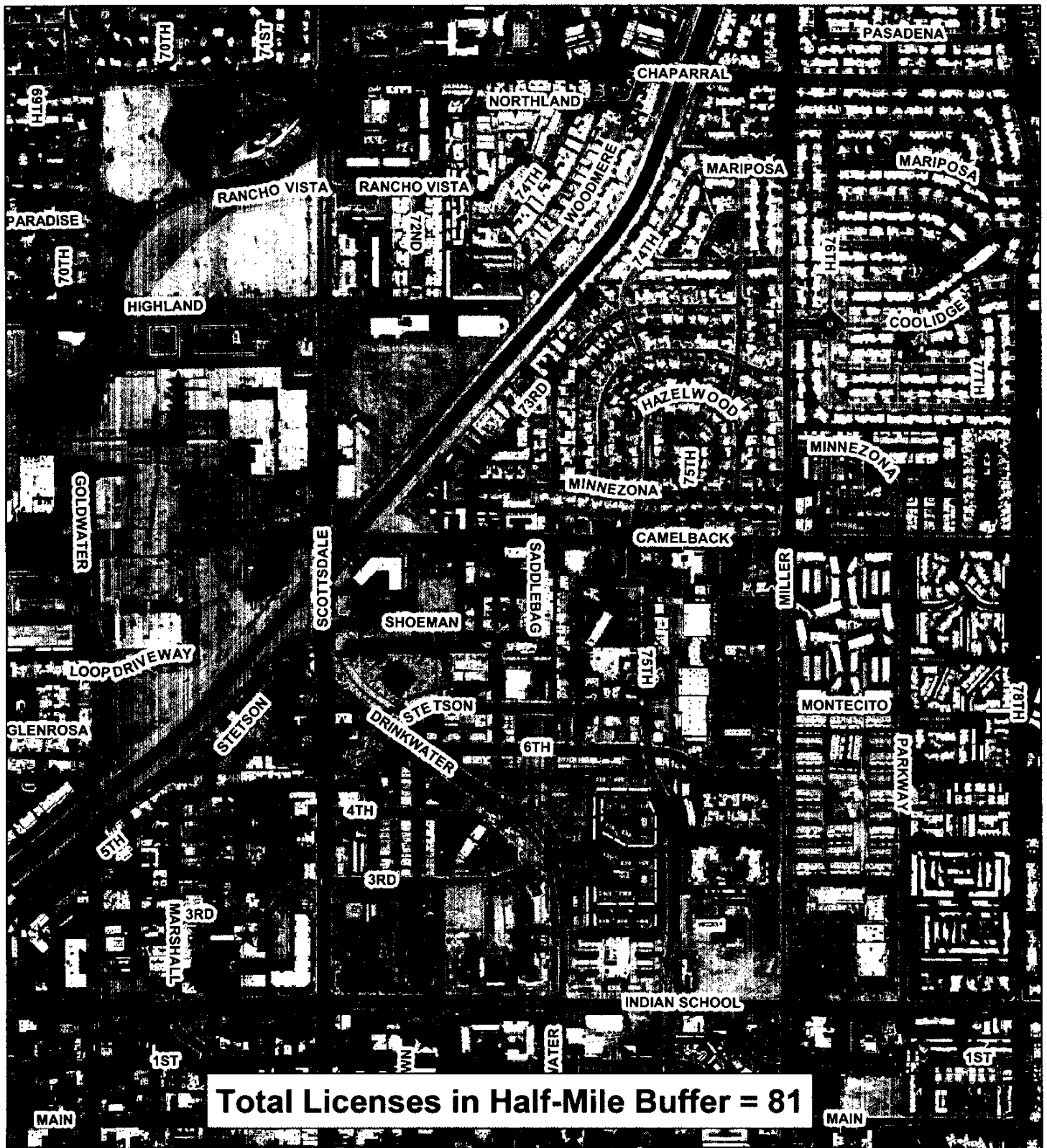
Kit Cat Lounge

ATTACHMENT #1



8-LL-2003
Attachment #2

Liquor Licenses Within A Half-Mile Radius of 4426 N Saddlebag Trail



Liquor Licenses.mxd
 Printed: 02/07/2003
 Created By: Brian Hancock
 Source: City of Scottsdale, State
 of Arizona Dept. of Liquor Licenses
 and Control.

0 625 1,250 2,500 Feet

1 inch equals 738.42 feet

8-LL-2003



Parking Overview

4426 N Saddlebag Trail					
Public Floor Area					
Bar:	1,537	SF			
Total:	1,537	/	35	=	43.91
Parking Required				=	43.91 spaces
P3 Area	3,066.60	SF /	300	=	10.22
On-Street Parking	53	SF /	25	=	2.12
Provided On-site				=	4 spaces
Parking Provided				=	16.35 spaces
Difference:					-27.57

7332 & 7402 E Camelback Rd					
Employee Only - Not Included in total					
Retail:	680	/	250	=	2.72
Office:					
	1,596	/	300	=	5.32
	2,276	/	300	=	7.59
Total Required:				=	15.63
On-Lot Parking				=	28.00
Dirt -lot				=	3
Total Provided:				=	31.00
Difference:					15.37 spaces

4422 N Civic Center Plaza					
Office:	5,791	/	300	=	19.30
Total Required:				=	19.30
On-Lot Parking				=	9.00
P-3 Credit				=	17.36
Total Provided:				=	26.36
Difference:					7.06 spaces

4414 N Civic Center Plaza					
Office:	5,204	/	300	=	17.35
Total Required:				=	17.35
On-Lot Parking				=	9.00
P-3 Credit				=	16.74
Total Provided:				=	25.74
Difference:					8.39 spaces

7373 E Camelback Rd					
Retail:	4,184	/	250	=	16.74
Office:	6,275	/	300	=	20.92
Total Required:				=	37.65
On-Lot Parking				=	29.00
P-3 Credit				=	78.19
Total Provided:				=	107.19
Difference:					69.54 spaces

Total of 47 parking spaces south of Camelback Road for Patrons.

Total of 31 parking spaces north of Camelback Road for Employees Only.



8-LL-2003

Kit Cat Lounge

ATTACHMENT #5

REVIEW SHEET

Application type: **Other**
Name of Business: **Pussycat Lounge**
Address: **4426 North Saddlebag Trail**
License Number: **06070420**

DETAILS

This application is for a change of location for a bar license. The applicant is intending to open the Pussycat Lounge at 4426 North Saddlebag Trail.

CONCERNS

Controlling Persons: Mr. Asher indicated that he is the sole officer and stockholder of Lucid Entertainment. Mr. Asher indicated that he is president of Vivid Entertainment, an expired tradename owned by Marcus Knight of Higley, Arizona.

During an internet search, the terms "vivid entertainment" and "william asher" were used, producing numerous connections to pornography websites. Although the specific web sites were not checked, it appears that PBS produced a video titled "American Porn: The Business: The Mainstream" where Bill Asher, president of Vivid Entertainment, "which produces adult movies," was interviewed. A visit to a web site which specializes in business information listed Vivid Entertainment Group as the "world's top producer of adult films" and William Asher as the "Chairman, President and CEO."

Site Inspection: An inspection was conducted on 021403, and the property was in the process of demolition of the interior and no build-outs have begun. Approval would be conditional to site inspection upon completion of build-outs. The construction manager, Ryan Jocque, said that he hopes to have the building completed in May 2003.

Licenses and Permits: The applicant has applied for a Privilege Tax License and Liquor License with the City of Scottsdale. Under the category of building permit, there was a permit indicating "Tenant Rush Bar."

Traffic/Customer Concerns: There are concerns about adding another Class 6 liquor establishment in an area congested with other liquor establishments; the Pussycat Lounge will be immediately adjacent to Axis-Radius, and within a block of Zipps on Camelback, Chances Are, Pasta Brioni, Circle K, Budda Bar, Downside Risk Restaurant and Bar, Tequila Grill, Drift, Suede, Sanctuary, Six, Maloney's, Martini Ranch, Buckets, Pearl, Fusion, and Blue Horse Tavern. On this street, there is one other Class 6 and three restaurants (at least one of which is behaving like a Class 6 bar). There are concerns about the patrons, especially in this area congested by heavy traffic during bar hours; emergency personnnel presently have difficulty arriving at the scene of a call in this area. Vehicle traffic is usually bumper-to-bumper within one hour of bar closing, and pedestrian traffic is extremely heavy. Parking is extremely challenging at best, even with four valet operations within one block.

JAN-DEC 2002 CALLS FOR SERVICE ACTIVITY FOR AREA AROUND 4426 N SADDLEBAG

JAN-DEC 2002 CALLS FOR SERVICE FOR SPECIFIC SUBZONES*						
BY CALL TYPE			Number		Percent	
CALL FOR SERVICE						
911WEL 911 welfare check			777		8.11	
459VEH Burglary from vehicle report			456		4.76	
CKSUBJ Check subject			445		4.64	
487 Theft report			440		4.59	
UIP Urinating in public			385		4.02	
ASSIST Assist another agency			305		3.18	
CKWEL Check welfare			266		2.77	
CKAREA Check a specific area			260		2.71	
LIQUOR Liquor violation			251		2.62	
415 Disturbance			248		2.59	
CKVEH Check a vehicle			246		2.57	
CRIMDAM Criminal Damage			237		2.47	
AT Auto Theft			228		2.38	
SHPLIFT Shoplifting			227		2.37	
MUSIC Music disturbance			224		2.34	
415FAM Family fight			223		2.33	
CELLPHN			221		2.31	
CKACT Check activity			207		2.16	
415SUBJ Subject disturbing			203		2.12	
ILLPARK Illegal parking			202		2.11	
390 Intoxicated subject/driver			195		2.03	
459 Burglary report			194		2.02	
PARTY Party Disturbance			179		1.87	
LITTER Littering			169		1.76	
ASSAULT Simple Assault report			160		1.67	
FIGHT Fight			142		1.48	
415390 Intoxicated subject causing a disturbance			100		1.04	
CKHAZ Check hazard			94		0.98	
FRAUD Fraud			92		0.96	
DR Title for all misc. reports			90		0.94	
FLAG			82		0.86	
SUSPECT Suspect contact			72		0.75	
ABDVEH Abandoned vehicle			67		0.70	
VIOLOP Violation of order of protection			65		0.68	
THREATS Threats			59		0.62	
CP Close Patrol			58		0.61	
COMPOL Community Policing			57		0.59	
ASLTJO Assault just occurred			54		0.56	
CKBUS Check business			53		0.55	
RECAT Recovered stolen vehicle			52		0.54	
211A Armed robbery alarm			50		0.52	
415DOG Barking Dog			48		0.50	
415JUV Juvenile disturbance			48		0.50	
HARASS Harassment			48		0.50	
LOSTPRP Lost property report			46		0.48	
CCODE			44		0.46	
CKSIG Check traffic signal			42		0.44	
FIRE Fire			40		0.42	
909 Directed Activity			39		0.41	
487VEH Theft from vehicle report			35		0.37	
CKRES Check residence			34		0.35	
MISPERS Missing person/juvenile			34		0.35	
STANDBY Civil stand-by/keep the peace			33		0.34	
BARCK Bar check			32		0.33	
DC Disorderly conduct			31		0.32	
RUNAWAY Runaway report			31		0.32	
415VEH Vehicle disturbing			30		0.31	
SDOWN			30		0.31	
TRESPAS Trespass			30		0.31	
901 Dead body			27		0.28	
T Traffic stop			27		0.28	
TRESIP			27		0.28	
ATTAT Attempted auto theft			25		0.26	
Total				9586	100	

BY HOUR OF DAY		
Hour	Number	Percent
0001	902	9.41
0022	767	8.00
0000	702	7.32
0023	612	6.38
0021	584	6.09
0016	446	4.65
0015	443	4.62
0014	427	4.45
0012	426	4.44
0020	420	4.38
0017	416	4.34
0018	412	4.30
0019	399	4.16
0011	397	4.14
0013	370	3.86
0002	341	3.56
0010	337	3.52
0009	302	3.15
0008	231	2.41
0007	193	2.01
0003	162	1.69
0006	111	1.16
0004	106	1.11
0005	80	0.83
Total	9586	100

JAN-DEC 2002 CALLS FOR SERVICE ACTIVITY FOR AREA AROUND 4426 N SADDLEBAG

JAN-DEC 2002 CALLS FOR SERVICE FOR SPECIFIC SUBZONES*				
BY CALL TYPE		Number		Percent
CALL FOR SERVICE				
		23		0.24
CRUELTY Cruelty to animals		23		0.24
FOOTPAT Foot patrol		23		0.24
NPROB		23		0.24
THEFTID		23		0.24
961390 Accident, no injury, impaired driver involved		22		0.23
AGGASLT Aggravated assault report		21		0.22
PODD		21		0.22
POM		21		0.22
SNDSHOT Sound of shots fired (heard only)		20		0.21
OD Overdose		19		0.20
SXASLT		19		0.20
ATT459 Attempted burglary		18		0.19
FORGERY Forgery		17		0.18
459S Silent burglary alarm		16		0.17
SUSSUBJ Suspicious subject		16		0.17
SUSVEH Suspicious vehicle		16		0.17
LEASH Leash law violation		14		0.15
ATTSUIC Subject attempting suicide		13		0.14
487JO Theft just occurred		12		0.13
CRIMJO		11		0.11
ILLTRAN Ill. use of transportation/joyride		11		0.11
PODP		11		0.11
THRSUIC Subject threatening suicide		11		0.11
UNKP		10		0.10
459IP Burglary in progress		9		0.09
SERVOP Serve order of protection		9		0.09
SGUN		9		0.09
211 Armed robbery delayed		8		0.08
FLDSRV Field services request		8		0.08
311 Indecent Exposure		7		0.07
311JO Indecent Exposure just occurred		7		0.07
DISLIQ Disturbance at a liquor estab.		7		0.07
FAILID		7		0.07
210 Strong arm robbery (no weapon)		6		0.06
CRIMIP		6		0.06
POSSMJ Possession of marijuana		6		0.06
SOLICIT Check solicitor		6		0.06
961HRJO		5		0.05
ATJO Auto theft just occurred		5		0.05
CKWATER Check a water problem		5		0.05
CURFEW Curfew violation		5		0.05
FIREWK Fireworks disturbing		5		0.05
PHONE		5		0.05
PROWLER Prowler		5		0.05
962390 Injury accident, impaired driver involved		4		0.04
DEADANM Dead animal		4		0.04
FLSINFO False information		4		0.04
FRAUDIP Fraud in progress		4		0.04
SKNIFE		4		0.04
459JO Burglary just occurred		3		0.03
487IP Theft in progress		3		0.03
918 Person with mental problems		3		0.03
960HRJO		3		0.03
ASLTIP Assault in progress		3		0.03
BOMB		3		0.03
FNDCHLD Found child		3		0.03
FRAUDJO Fraud just occurred		3		0.03
HORSE Horse patrol		3		0.03
LOITER Loitering or panhandling		3		0.03
PONARC		3		0.03
SUBJDWN Subject down		3		0.03
311IP Indecent Exposure in progress		2		0.02

JAN-DEC 2002 CALLS FOR SERVICE ACTIVITY FOR AREA AROUND 4426 N SADDLEBAG

JAN-DEC 2002 CALLS FOR SERVICE FOR SPECIFIC SUBZONES*				
BY CALL TYPE			BY HOUR OF DAY	
CALL FOR SERVICE	Number	Percent	Hour	Number Percent
ATIP Auto theft in progress	2	0.02		
ATT211 Attempted robbery	2	0.02		
CRMDMJO Criminal damage just occurred	2	0.02		
CRSPEED	2	0.02		
EMERGCO	2	0.02		
ILLSTOR Illegal vehicle storage on roadway	2	0.02		
KIDNAP Delayed kidnapping report only	2	0.02		
NEIGPRB Neighbor problem without disturbance	2	0.02		
SEARCH Search warrant	2	0.02		
SEXASLT Sexual assault	2	0.02		
STAB	2	0.02		
TRESJO	2	0.02		
TRSPIP Trespass in progress	2	0.02		
VIOLCO	2	0.02		
210JO Strong arm robbery just occurred	1	0.01		
211T Armed robbery	1	0.01		
960A Unknown injury accident, Dept Emp involved	1	0.01		
962HRJO	1	0.01		
ABUSE Child abuse	1	0.01		
ARSON Arson	1	0.01		
CARJACK Car jacking	1	0.01		
CRMDMIP Criminal damage in progress	1	0.01		
DEATH Death investigation	1	0.01		
ENDNGR	1	0.01		
FAILRTN Failure to return rental property	1	0.01		
FLSRPT False reporting	1	0.01		
HAZMAT Hazardous materials	1	0.01		
ILLDUMP Illegal dumping	1	0.01		
INJANIM Injured animal	1	0.01		
OPDOOR	1	0.01		
SHOOT Shooting	1	0.01		
SHOTFRD Shots fired	1	0.01		
SXASLJO Sexual assault just occurred	1	0.01		
TOBACCO	1	0.01		
Total	9586	100.00		

JAN-DEC 2002 CALLS FOR SERVICE ACTIVITY FOR AREA AROUND 4426 N SADDLEBAG

JAN-DEC 2002 CALLS FOR SERVICE FOR SPECIFIC SUBZONES*					
TOP 28			TOP 25		
NAME OF BUSINESS	Number	Percent	ADDRESS	Number	Percent
ORCHID TREE APTS	254	2.65	7014 E CAMELBACK RD	937	9.77
FRYS 7628	144	1.50	6801 E CAMELBACK RD	290	3.03
HEATHERTREE APTS 777	126	1.31	7628 E INDIAN SCHOOL RD	162	1.69
SANCTUARY	119	1.24	7350 E STETSON DR	161	1.68
ALEXAN APTS	115	1.20	4400 N BROWN AV	157	1.64
MAYA APTS	101	1.05	7777 E HEATHERBRAE DR	156	1.63
HEATHERTREE APTS 414	95	0.99	7340 E INDIAN PZ	143	1.49
FASHION SQUARE	86	0.90	4111 N DRINKWATER BL	141	1.47
MOTEL 6	84	0.88	4140 N 78 ST	129	1.35
SAN MARIN APTS	81	0.84	7340 E SHOEMAN LN	128	1.34
AXIS	72	0.75	4215 N DRINKWATER BL	120	1.25
DOS GRINGOS	71	0.74	7625 E CAMELBACK RD	107	1.12
MARTINI RANCH	70	0.73	7295 E STETSON DR	102	1.06
NORDSTROMS	69	0.72	4500 N SCOTTSDALE RD	100	1.04
CALL ONLY	66	0.69	4425 N 78 ST	99	1.03
CAT EYE LOUNGE	59	0.62	6848 E CAMELBACK RD	98	1.02
EL CHAPARRAL APTS	55	0.57	7300 E 6 AV	98	1.02
CAJUN HOUSE	53	0.55	7350 E 6 AV	81	0.84
ANDERSONS 5TH ESTATE	51	0.53	4435 N 78 ST	80	0.83
RODEWAY INN	45	0.47	4209 N CRAFTSMAN CT	77	0.80
			7055 E CAMELBACK RD	77	0.80
			7117 E 3 AV	73	0.76
			6900 E CAMELBACK RD	73	0.76
			7164 E STETSON DR	64	0.67
			4950 N MILLER RD	61	0.64
			7300 E STETSON DR	61	0.64

JAN-DEC 2002 CALLS FOR SERVICE ACTIVITY FOR AREA AROUND 4426 N SADDLEBAG

JAN-DEC 2002 CALLS FOR SERVICE (WHERE A DR WAS WRITTEN) FOR SPECIFIC SUBZONES*					
BY CALL TYPE				BY HOUR OF DAY	
CALL FOR SERVICE		Number	Percent	Hour	Number Percent
UIP Urinating in public		379	12.39	0022	352 11.50
459VEH Burglary from vehicle report		336	10.98	0001	332 10.85
487 Theft report		269	8.79	0021	247 8.07
LIQUOR Liquor violation		245	8.01	0023	223 7.29
SHPLIFT Shoplifting		192	6.27	0000	217 7.09
390 Intoxicated subject/driver		180	5.88	0012	144 4.71
LITTER Littering		167	5.46	0014	137 4.48
AT Auto Theft		151	4.93	0015	128 4.18
CRIMDAM Criminal Damage		151	4.93	0016	121 3.95
459 Burglary report		143	4.67	0013	114 3.73
ASSAULT Simple Assault report		109	3.56	0010	113 3.69
DR Title for all misc. reports		90	2.94	0011	111 3.63
FRAUD Fraud		51	1.67	0018	108 3.53
CCODE		41	1.34	0009	102 3.33
VIOLOP Violation of order of protection		36	1.18	0020	98 3.20
487VEH Theft from vehicle report		30	0.98	0019	95 3.10
DC Disorderly conduct		30	0.98	0017	94 3.07
901 Dead body		27	0.88	0007	80 2.61
RECAT Recovered stolen vehicle		24	0.78	0008	76 2.48
AGGASLT Aggravated assault report		21	0.69	0002	60 1.96
PODD		20	0.65	0006	40 1.31
POM		20	0.65	0003	31 1.01
ATTAT Attempted auto theft		19	0.62	0005	22 0.72
961390 Accident, no injury, impaired driver involved		18	0.59	0004	15 0.49
RUNAWAY Runaway report		16	0.52	Total	3060 100
TRESPAS Trespass		16	0.52		
FORGERY Forgery		13	0.42		
LOSTPRP Lost property report		12	0.39		
SXASLT		12	0.39		
ATT459 Attempted burglary		11	0.36		
PODP		11	0.36		
THEFTID		11	0.36		
ATTSUIC Subject attempting suicide		10	0.33		
THREATS Threats		9	0.29		
211 Armed robbery delayed		8	0.26		
415FAM Family fight		8	0.26		
ABDVEH Abandoned vehicle		8	0.26		
CKSUBJ Check subject		8	0.26		
ASLTJO Assault just occurred		7	0.23		
DISLIQ Disturbance at a liquor estab.		7	0.23		
FAILID		7	0.23		
HARASS Harassment		7	0.23		
ILLTRAN Ill. use of transportation/joyride		6	0.20		
POSSMJ Possession of marijuana		6	0.20		
210 Strong arm robbery (no weapon)		5	0.16		
311 Indecent Exposure		5	0.16		
487JO Theft just occurred		5	0.16		
BARCK Bar check		5	0.16		
CURFEW Curfew violation		5	0.16		
415390 Intoxicated subject causing a disturbance		4	0.13		
415SUBJ Subject disturbing		4	0.13		
962390 Injury accident, impaired driver involved		4	0.13		
FLSINFO False information		4	0.13		
MISPERS Missing person/juvenile		4	0.13		
SUSPECT Suspect contact		4	0.13		
961HRJO		3	0.10		
ASSIST Assist another agency		3	0.10		
OD Overdose		3	0.10		
PONARC		3	0.10		
THRSUIC Subject threatening suicide		3	0.10		
415 Disturbance		2	0.07		
ATJO Auto theft just occurred		2	0.07		
ATT211 Attempted robbery		2	0.07		

JAN-DEC 2002 CALLS FOR SERVICE ACTIVITY FOR AREA AROUND 4426 N SADDLEBAG

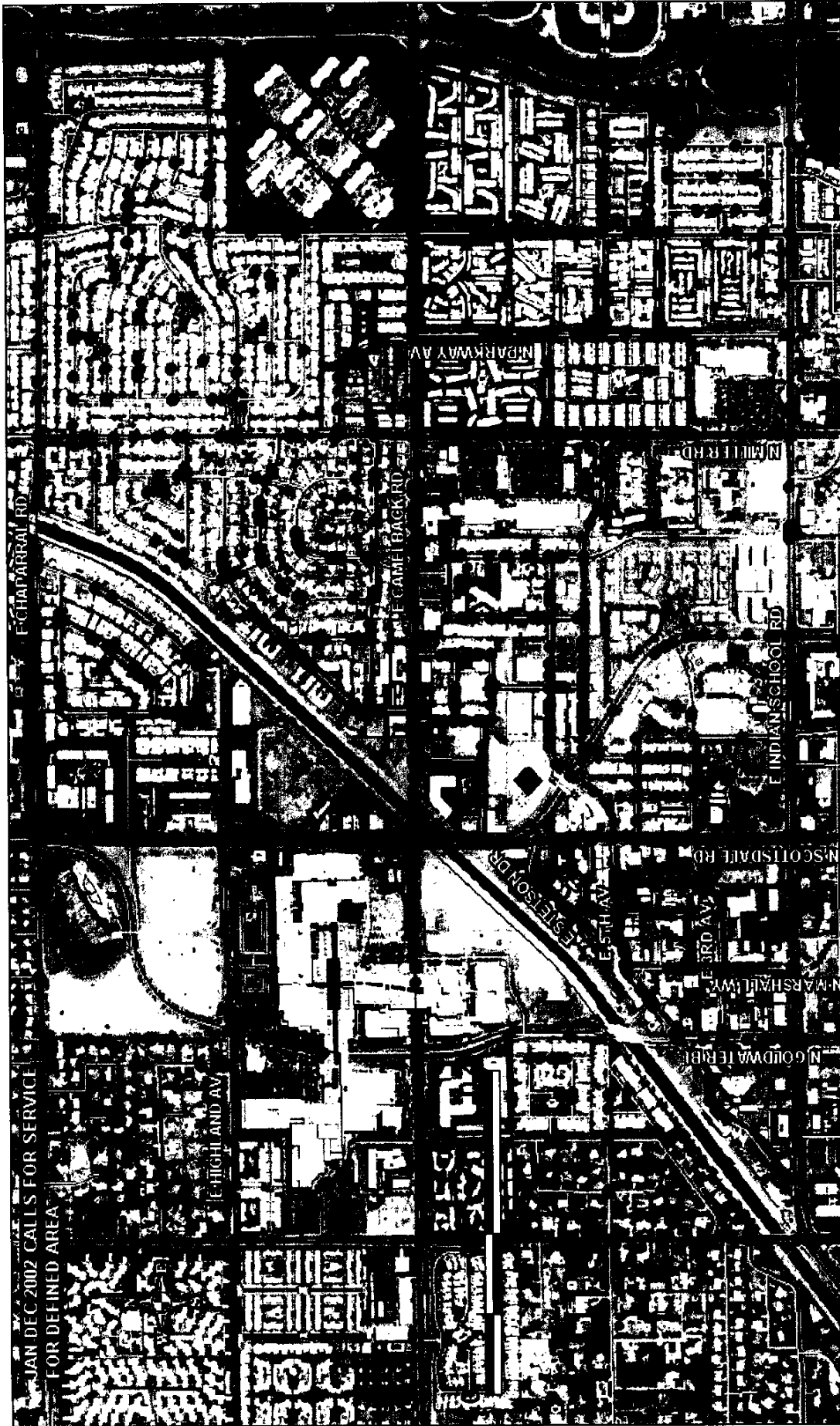
JAN-DEC 2002 CALLS FOR SERVICE (WHERE A DR WAS WRITTEN) FOR SPECIFIC SUBZONES*			BY HOUR OF DAY		
BY CALL TYPE					
CALL FOR SERVICE		Number	Percent	Hour	Number
BOMB		2	0.07		Percent
CKWEL Check welfare		2	0.07		
CRIMJO		2	0.07		
CRSPEED		2	0.07		
FIGHT Fight		2	0.07		
PARTY Party Disturbance		2	0.07		
T Traffic stop		2	0.07		
210JO Strong arm robbery just occurred		1	0.03		
459JO Burglary just occurred		1	0.03		
960A Unknown injury accident, Dept Emp involved		1	0.03		
960HRJO		1	0.03		
962HRJO		1	0.03		
ABUSE Child abuse		1	0.03		
ARSON Arson		1	0.03		
ASLTIP Assault in progress		1	0.03		
CARJACK Car jacking		1	0.03		
CELLPHN		1	0.03		
CKACT Check activity		1	0.03		
CKVEH Check a vehicle		1	0.03		
CP Close Patrol		1	0.03		
CRIMIP		1	0.03		
CRMDMIP Criminal damage in progress		1	0.03		
CRMDMJO Criminal damage just occurred		1	0.03		
DEATH Death investigation		1	0.03		
ENDNGR		1	0.03		
FAILRTN Failure to return rental property		1	0.03		
FLAG		1	0.03		
FLSRPT False reporting		1	0.03		
HAZMAT Hazardous materials		1	0.03		
KIDNAP Delayed kidnapping report only		1	0.03		
PHONE		1	0.03		
PROWLER Prowler		1	0.03		
SDOWN		1	0.03		
SEXASLT Sexual assault		1	0.03		
SGUN		1	0.03		
SHOOT Shooting		1	0.03		
SOLICIT Check solicitor		1	0.03		
TOBACCO		1	0.03		
TRESIP		1	0.03		
TRESJO		1	0.03		
UNKP		1	0.03		
Total		3060	100.00		

JAN-DEC 2002 CALLS FOR SERVICE ACTIVITY FOR AREA AROUND 4426 N SADDLEBAG

JAN-DEC 2002 CALLS FOR SERVICE (WHERE A REPORT WAS TAKEN) FOR SPECIFIC SUBZONES*

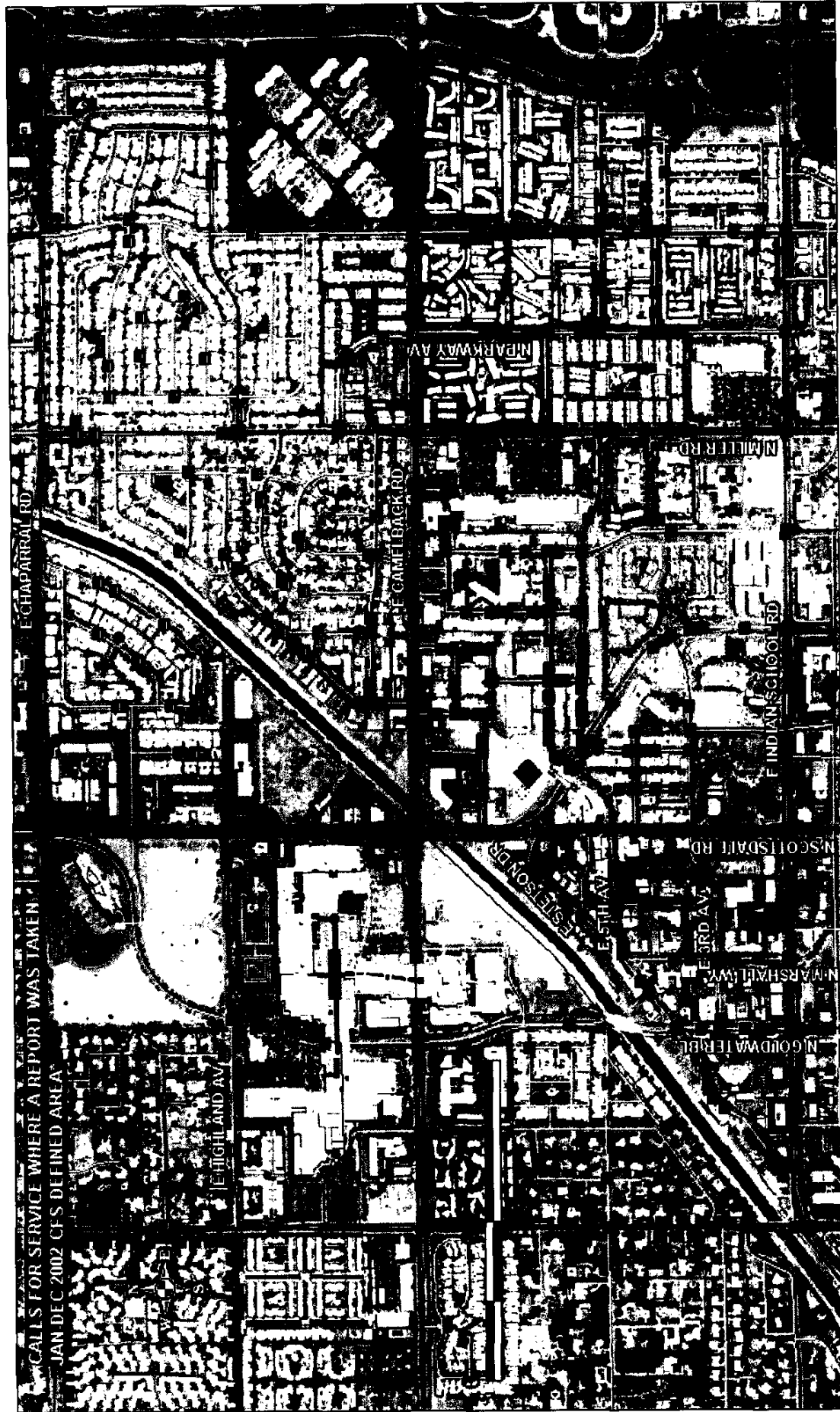
TOP 20			TOP 25		
NAME OF BUSINESS	Number	Percent	ADDRESS	Number	Percent
FRYS 7628	57	1.86	7014 E CAMELBACK RD	311	10.16
ORCHID TREE APTS	55	1.80	4400 N BROWN AV	146	4.77
NORDSTROMS	35	1.14	7350 E STETSON DR	120	3.92
HEATHERTREE APTS 7777	33	1.08	7350 E 6 AV	79	2.58
CALL ONLY	31	1.01	4500 N SCOTTSDALE RD	76	2.48
SANCTUARY	30	0.98	7300 E 6 AV	70	2.29
ROBINSONS MAY	28	0.92	7628 E INDIAN SCHOOL RD	67	2.19
FASHION SQUARE	25	0.82	6801 E CAMELBACK RD	65	2.12
AXIS	25	0.82	7340 E INDIAN PZ	51	1.67
HEATHERTREE APTS 4140	23	0.75	7055 E CAMELBACK RD	41	1.34
CAT EYE LOUNGE	20	0.65	4140 N 78 ST	40	1.31
DOS GRINGOS	18	0.59	N SADDLEBAG TR AND E SHOEMAN LN	37	1.21
MAYA APTS	17	0.56	7777 E HEATHERBRAE DR	37	1.21
MARTINI RANCH	16	0.52	6900 E CAMELBACK RD	36	1.18
ALEXAN APTS	16	0.52	7340 E SHOEMAN LN	35	1.14
ROBINSON'S MAY	15	0.49	7300 E STETSON DR	35	1.14
SCDL SHADOWS	14	0.46	7295 E STETSON DR	31	1.01
CALL	14	0.46	4215 N DRINKWATER BL	28	0.92
CIRCLE K 4440	13	0.42	7164 E STETSON DR	23	0.75
CAJUN HOUSE	12	0.39	4111 N DRINKWATER BL	22	0.72
			7100 E 3 AV	21	0.69
			4209 N CRAFTSMAN CT	20	0.65
			4435 N 78 ST	20	0.65
			7117 E 3 AV	19	0.62
			N HAYDEN RD AND E CHAPARRAL RD	19	0.62
			7625 E CAMELBACK RD	19	0.62

JAN-DEC 2002 CALLS FOR SERVICE ACTIVITY FOR AREA AROUND 4426 N SADDLEBAG



MAP OF AREA - ALL CFS - Defined area police subzones 1002, 1003, 1102-1105 and 0902-0906.

JAN-DEC 2002 CALLS FOR SERVICE ACTIVITY FOR AREA AROUND 4426 N SADDLEBAG



MAP OF AREA - CFS-DR - Defined area police subzones 1002, 1003, 1102-1105 and 0902-0906.

DEPARTMENTAL REPORTS TAKEN AROUND 4426 N SADDLEBACK TR - JAN-DEC 2002 CALLS FOR SERVICE WHERE A REPORT WAS WRITTEN



AREA AROUND 4426 N SADDLEBAG - Defined area police subzones 1002, 1003, 1102-1105 and 0902-0906.

March 1st, 2003

Dear Neighbor,

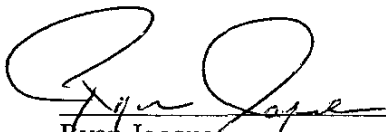
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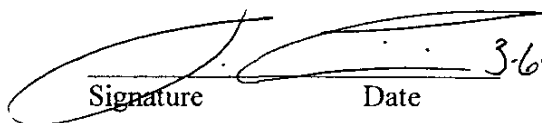
Thank you for your support in this matter. Please feel free to contact me at your convenience and I look forward to seeing you all at the Kit Cat.

Very Truly Yours,


Ryan Jocque

AXIS
Company Name

LESCORIERI
Printed Name

 3-6-03
Signature Date

Attachment #8

March 1st, 2003

Dear Neighbor,

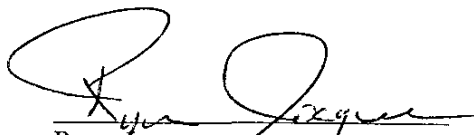
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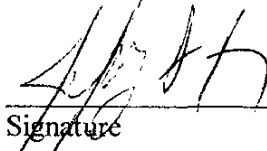
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Very Truly Yours,


Ryan Locque

Fry Investment Co., LLC
Company Name

Jeffrey S. Fry
Printed Name

 3/10/03
Signature Date

March 1st, 2003

Dear Neighbor,

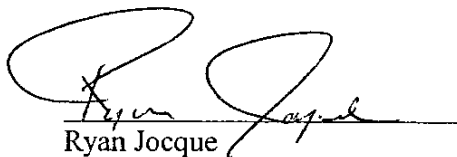
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Very Truly Yours,


Ryan Jocque

Espressions Coffee Roastery
Company Name

Virgil Paulsen
Printed Name

Virgil Paul 3/10/03
Signature Date

March 1st, 2003

Dear Neighbor,

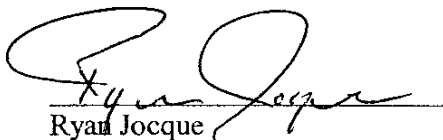
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Very Truly Yours,


Ryan Jocque

Sundiat Resorts Inc
Company Name

Jude Nau
Printed Name

Jude Nau 3/8/03
Signature Date

March 1st, 2003

Dear Neighbor,

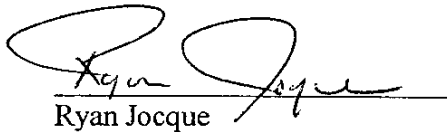
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Very Truly Yours,


Ryan Jocque

Sir Speedy Printing Scottsdale
Company Name

Sheri Stath Bercaw
Printed Name

Sheri Stath Bercaw 3/6/03
Signature Date

March 1st, 2003

Dear Neighbor,

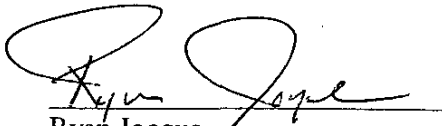
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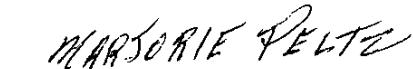
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Very Truly Yours,


Ryan Jocque

Company Name


Printed Name


Signature Date

March 1st, 2003

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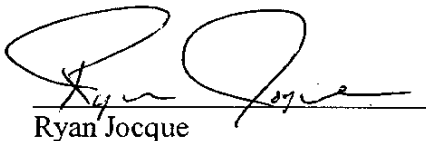
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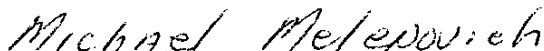
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Very Truly Yours,


Ryan Jocque


Company Name


Printed Name

 3/5/03
Signature Date

March 1st, 2003

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Very Truly Yours,


Ryan Jocque

CANINE PREFERRED
Company Name
4450 N. Saddlebag Trail
Scottsdale, AZ 85251

Printed Name

Signature

Date

March 1st, 2003

Dear Neighbor,

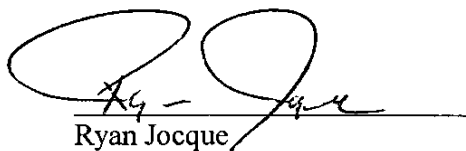
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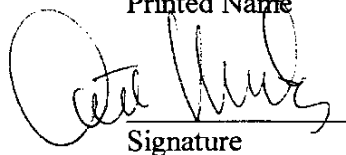
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Very Truly Yours,


Ryan Jocque

Vizio Saloon
Company Name

ART MARTINEZ
Printed Name

 MAR 5-03
Signature Date

March 1st, 2003

Dear Neighbor,

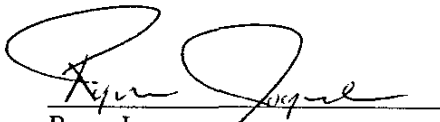
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Ryan Jocque

FUSION RESTAURANT + LOUNGE
Company Name

JENNIFER L. LONG
Printed Name

Jennifer L. Long 3/5/03
Signature Date

March 1st, 2003

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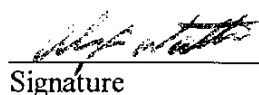
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Ryan Jocque

SYNERGY TOURS
Company Name

ALEXIS WATTS
Printed Name

 3-6-03
Signature Date

March 1st, 2003

Dear Neighbor,

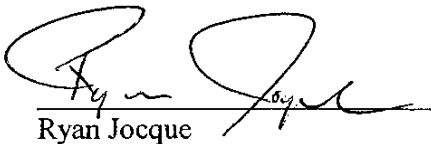
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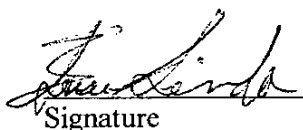
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Very Truly Yours,


Ryan Jocque

PHUKET ISLAND
Company Name

LINDA
Printed Name

 3/10/03
Signature Date

March 1st, 2003

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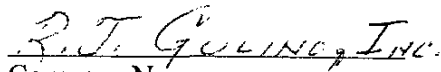
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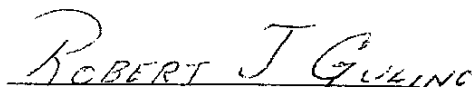
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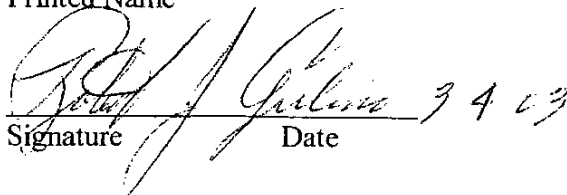
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Company Name


Printed Name


Signature Date 3 4 03

March 1st, 2003

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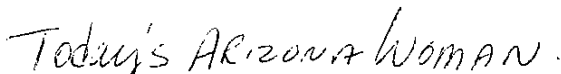
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Ryan Jocque


Company Name


Printed Name


Signature Date 3/4/03.

March 1st, 2003

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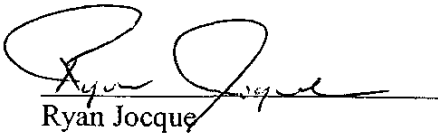
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Very Truly Yours,


Ryan Jocque

WESTTEC MORTGAGE
Company Name

SOCIATES HATCO
Printed Name

 3-4-03
Signature Date

March 1st, 2003

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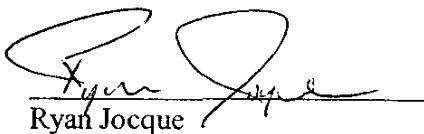
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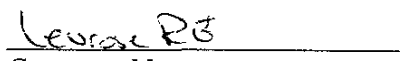
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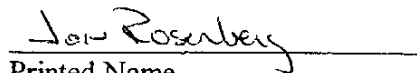
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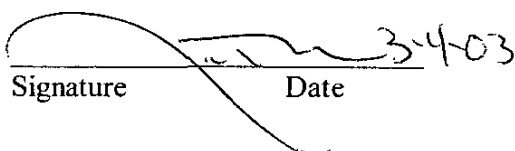
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Ryan Jocque


Company Name


Printed Name


Signature Date 3-4-03

March 1st, 2003

Dear Neighbor,

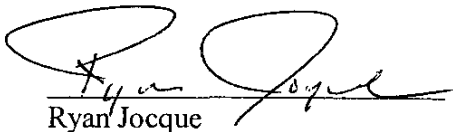
The purpose of this letter is to seek community approval of a "liquor license" for the new Lucid Entertainment "Kit Cat Lounge" located at 4426 N. Saddlebag Trail, Scottsdale 85251.

This license is very common in the Bar industry and is needed for any type of alcohol sales without the service of food. Although this License is costly and is only needed for a limited number of hours during the week, it is still a requirement by the City of Scottsdale. Our hours of operation will be 7pm to 1am Monday through Saturday.

The Kit Cat is a new lounge delivering to downtown Scottsdale an "Old Hollywood" classic living room martini lounge. Influenced by some of the first lounges Hollywood had to offer, mixed with the modern décor Scottsdale lounges are famous for, the Kit Cat will create an atmosphere for all generations to enjoy.

Thank you for your support in this matter. Please feel free to contact me at your convenience and I look forward to seeing you all at the Kit Cat.

Very Truly Yours,


Ryan Jocque

American Family
Company Name

Don Nealey
Printed Name

Don Nealey 3/6/03
Signature Date

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH **BLACK INK**

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

SECTION 1 This application is for a:

- ☐ INTERIM PERMIT *Complete Section 5*
- ☐ NEW LICENSE *Complete Sections 2, 3, 4, 13, 14, 15, 16, 17*
- ☐ PERSON TRANSFER (Bars & Liquor Stores ONLY)
Complete Sections 2, 3, 4, 11, 13, 15, 16, 17
- ☐ LOCATION TRANSFER (Bars and Liquor Stores ONLY)
Complete Sections 2, 3, 4, 11, 13, 15, 16, 17
- ☐ PROBATE/WILL ASSIGNMENT/FORCE OF DEED
Complete Sections 2, 3, 4, 11, 13, 15, 16, 17
- ☐ GOVERNMENT *Complete Sections 2, 3, 4, 11, 13, 15, 16, 17*

SECTION 2 Type of ownership:

- ☐ J.T.W.R.O.S. *Complete Section 6*
- ☐ INDIVIDUAL *Complete Section 6*
- ☐ PARTNERSHIP *Complete Section 6*
- ☐ CORPORATION *Complete Section 7*
- ☐ LIMITED LIABILITY CO. *Complete Section 7*
- ☐ CLUB *Complete Section 8*
- ☐ GOVERNMENT *Complete Section 10*
- ☐ TRUST *Complete Section 6*
- ☐ OTHER Explain _____

SECTION 3 Type of license and fees:

LICENSE #: 06070420

1. Type of License: _____ 2. Total fees attached: \$ _____

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

SECTION 4 Applicant: (All applicants must complete this section)

1. Applicant/Agent's Name: Ms.
(Insert one name ONLY to appear on license) Last First Middle
2. Corp./Partnership/L.L.C.: _____
(Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: Kit Cat Lounge
(Exactly as it appears on the exterior of premises)
4. Business Address: _____
(Do not use PO Box Number) City COUNTY Zip
5. Business Phone: () Residence Phone: ()
6. Is the business located within the incorporated limits of the above city or town? ☐ YES ☐ NO
7. Mailing Address: _____ City State Zip
8. Enter the amount paid for a 06, 07, or 09 license: \$ _____ (Price of License ONLY)

DEPARTMENT USE ONLY

Accepted by: _____ Date: _____ Lic. # _____

Fees: Application Interim Permit Agent Change Club F. Prints \$ TOTAL

PROCESSING APPLICATIONS TAKES APPROXIMATELY 90 DAYS, AND CIRCUMSTANCES OFTEN RESULT IN A LONGER WAITING PERIOD.
YOU ARE CAUTIONED REGARDING PLANS FOR A GRAND OPENING, ETC., BEFORE FINAL APPROVAL AND ISSUANCE OF THE LICENSE.

LIC 0100 11/2000

*Disabled individuals requiring special accommodation, please call (602) 542-9027.

Attachment #9

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141

DLCC



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

2003 JAN 28 P 4:21

8-CC-2003

APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH **BLACK INK**

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

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- ☐ INTERIM PERMIT *Complete Section 5*
- ☐ NEW LICENSE *Complete Sections 2, 3, 4, 13, 14, 15, 16, 17*
- ☒ PERSON TRANSFER (Bars & Liquor Stores ONLY)
Complete Sections 2, 3, 4, 11, 13, 15, 16, 17
- ☒ LOCATION TRANSFER (Bars and Liquor Stores ONLY)
Complete Sections 2, 3, 4, 12, 13, 15, 16, 17
- ☐ PROBATE/WILL ASSIGNMENT/DIVORCE DECREE
Complete Sections 2, 3, 4, 9, 13, 15, 17 (fee not required)
- ☐ GOVERNMENT *Complete Sections 2, 3, 4, 10, 13, 15, 16, 17*

JAN 28 2003

SECTION 2 Type of ownership:

- ☐ J.T.W.R.O.S. *Complete Section 6*
- ☐ INDIVIDUAL *Complete Section 6*
- ☐ PARTNERSHIP *Complete Section 6*
- ☒ CORPORATION *Complete Section 7*
- ☐ LIMITED LIABILITY CO. *Complete Section 7*
- ☐ CLUB *Complete Section 8*
- ☐ GOVERNMENT *Complete Section 10*
- ☐ TRUST *Complete Section 6*
- ☐ OTHER Explain _____

SECTION 3 Type of license and fees:

LICENSE #: 06070420

1. Type of License: Series 6 2. Total fees attached: \$ 224.00

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

SECTION 4 Applicant: (All applicants must complete this section)

1. Applicant/Agent's Name: Mr. Lewkowitz, H. J.
(Insert one name ONLY to appear on license) Last First Middle
2. Corp./Partnership/L.L.C.: Lucid Entertainment, Inc.
(Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: Pussycat Lounge
(Exactly as it appears on the exterior of premises)
4. Business Address: 4426 N. Saddlebag Trail, Scottsdale, Maricopa 85251
(Do not use PO Box Number) City COUNTY Zip
5. Business Phone: () pending Residence Phone: () [REDACTED]
6. Is the business located within the incorporated limits of the above city or town? ☒ YES ☐ NO
7. Mailing Address: [REDACTED]
8. Enter the amount paid for a 06, 07, or 09 license: \$ _____ (Price of License ONLY)

DEPARTMENT USE ONLY

Accepted by: M. Bostanaw Date: 1-28-03 Lic. # 06070420

Fees: 200 - - - - - 224 -
Application Interim Permit Agent Change Club F. Prints TOTAL

PROCESSING APPLICATIONS TAKES APPROXIMATELY 90 DAYS, AND CIRCUMSTANCES OFTEN RESULT IN A LONGER WAITING PERIOD.
YOU ARE CAUTIONED REGARDING PLANS FOR A GRAND OPENING, ETC., BEFORE FINAL APPROVAL AND ISSUANCE OF THE LICENSE.

SECTION 5 Interim Permit:

If you intend to operate business while your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.

There **MUST** be a valid license of the same type you are applying for currently issued to the location.

Enter the license number currently at the location. 2003 JAN 28 D 4:21

Is the license currently in use? ☐ YES ☐ NO If no, how long has it been out of use? _____

ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

_____, declare that I am the CURRENT LICENSEE of the stated license and
(Print full name)
I have read this application and the contents and all statements are true, correct and complete.

State of _____ County of _____

The foregoing instrument was acknowledged before me this

_____ day of _____, _____
Day of Month Month Year

My commission expires on: _____

(Signature of NOTARY PUBLIC)

SECTION 6 Individual or Partnership Owners:

Each person listed must submit a completed form "LIC0101", an "APPLICANT" type fingerprint card, and \$24 fee for each card.

Individual:

Last	First	Middle	% Owned	Residence Address	City State Zip
			%		

Partnership Name: (Only the first partner listed will appear on license) _____

General-Limited	Last	First	Middle	% Owned	Residence Address	City State Zip
<input type="checkbox"/> <input type="checkbox"/>						
<input type="checkbox"/> <input type="checkbox"/>						
<input type="checkbox"/> <input type="checkbox"/>						
<input type="checkbox"/> <input type="checkbox"/>				%		

(ATTACH ADDITIONAL SHEET IF NECESSARY)

Is any person, other than the above, going to share in the profits/losses of the business? ☐ YES ☐ NO

SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

☒ CORPORATION

Complete questions 1, 2, 3, 5, 6, 7, 8.

☐ L.L.C.

Complete questions 1, 2, 4, 5, 6, 7 and attach copy of Articles of Org. and Operation Agreement.

1. Name of Corporation/L.L.C.:

2003 JAN 23 4:21 PM
Asher Entertainment, Inc.

(Exactly as it appears on Articles of Inc. or Articles of Org.)

2. Date Incorporated/Organized: 09/18/01

State where Incorporated/Organized: California

3. AZ Corporation Commission File No.: F10613436

Date authorized to do business in AZ: pending

4. AZ L.L.C. File No.:

Date authorized to do business in AZ:

5. Is Corp./L.L.C. non-profit? ☐ YES ☒ NO If yes, give IRS tax exempt number:

6. List all directors/officers in Corporation/L.L.C.:

Last	First	Middle	Title	Residence Address	City	State	Zip
Asher, William	Michael-Fitzgerald		Pres./Sec.	[REDACTED]			

(ATTACH ADDITIONAL SHEET IF NECESSARY)

7. List stockholders or controlling members owning 10% or more:

Last	First	Middle	% Owned	Residence Address	City	State	Zip
Asher, William	Michael-Fitzgerald		100%	See Above			
			%				
			%				
			%				

(ATTACH ADDITIONAL SHEET IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach an ownership, and director/officer/members disclosure for the parent entity. Attach additional sheets as necessary in order to disclose real people.

SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

1. Name of Club:

(Exactly as it appears on Club Charter)

Date Chartered:

(Attach a copy of Club Charter)

2. Is club non-profit? ☐ YES ☐ NO If yes, give IRS tax exempt number:

3. List officer and directors:

Last	First	Middle	Title	Residence Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

SECTION 9 Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store:

Current Licensee's Name: _____
(exactly as it appears on license) Last First Middle

Assignee's Name: _____
Last First Middle

License Type: _____ License Number: _____ Date of Last Renewal: _____

ATTACH TO THIS APPLICATION A CERTIFIED COPY OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

SECTION 10 Government: (for cities, towns, or counties only)

Person to administer this license: _____
Last First Middle

Assignee's Name: _____
Last First Middle

A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.

SECTION 11 Person to Person Transfer:

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY).

Current Licensee's Name: Sevilla, Karen Entity: Agent
(exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)

Corporation/L.L.C. Name: Z & T Investments, Inc.
(Exactly as it appears on license)

Current Business Name: Sevilla's Gopher Club
(Exactly as it appears on license)

Current Business Address: 1654 E. McDowell Road
Phoenix, AZ 85006

License Type: Series 6 License Number: 06070420 Last Renewal Date: 01/02

Current Mailing Address (other than business): 3101 North Central Avenue #1500
Phoenix, AZ 85012

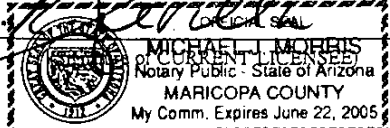
Have all creditors, lien holders, interest holders, etc. been notified of this transfer? ☒ YES ☐ NO

Does the applicant intend to operate the business while this application is pending? ☐ YES ☒ NO If yes, complete section 5, attach fee, and current license to this application.

I hereby relinquish my rights to the above described license to the applicant named in this application and hereby declare that the statements made in this section are true, correct and complete.

THEODORE R. SEVILLA, declare that I am the CURRENT LICENSEE of the stated license. I have read this
(Print full name)

application and the contents and all statements are true, correct and complete.


My commission expires on: _____

State of ARIZONA County of MARICOPA
The foregoing instrument was acknowledged before me this
20TH day of JANUARY, 2003
Day of Month Month Year

[Signature]
(Signature of NOTARY PUBLIC)

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE.

1. Current Business Name and Address: Sevill's Gopher Club
(Exactly as it appears on license) 2003 JAN 28 54 E. McDowell Road, Phoenix, AZ 85006
2. New Business Name and Address: Pussycat Lounge
(Do not use PO Box Number) 4426 N. Saddlebag Trail, Scottsdale, AZ 85251
3. License Type: Series 6 License Number: 06070420 Last Renewal Date: 01/02
4. What date do you plan to move? ASAP What date do you plan to open? April 1, 2003

SECTION 13 Questions for all in-state applicants:

1. Distance to nearest school: 2800 ft. Name/Address of school: Church & Scottsdale United Methodist School
(Regardless of distance) 4140 N. Miller Road
Scottsdale, AZ 85251
2. Distance to nearest church: 2800 ft. Name/Address of church: Scottsdale United Methodist Church
(Regardless of distance) 4140 N. Miller Road
Scottsdale, AZ 85251
3. I am the: ☒ LESSEE ☐ SUBLESSEE ☐ OWNER ☐ PURCHASER (of premises)
4. If the premises is leased give lessors name and address: Aeed Family Trust
6414 E. Aster Dr., Scottsdale, AZ 85254
- 4a. Monthly rental/lease rate \$ 3900.00 What is the remaining length of the lease? 10 yrs. mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ 1yr. Rent or other
(give details - attach additional sheet if necessary)
5. What is the total business indebtedness of the applicant for this license/location excluding lease? \$ 0

Does any one creditor represent more than 10% of that sum? ☐ YES ☒ NO If yes, list below. Total must equal 100%.

Last	First	Middle	% Owed	Residence Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for? (BE SPECIFIC) Cocktail Lounge / BAR
7. Has a license, or a transfer license for the premises on this application been denied by the state within the past one (1) year?
☐ YES ☒ NO If yes, attach explanation.
8. Does any spirituous liquor manufacturer, wholesaler, or employee, have any interest in your business? ☐ YES ☒ NO
9. Is the premises currently licensed with a liquor license? ☐ YES ☒ NO If yes, give license number and licensee's name:
License # (Exactly as it appears on license) Name

SECTION 14 Restaurant, or Hotel-Motel Applicants:

Is there a valid restaurant or hotel-motel liquor license at the proposed location? ☐ YES ☐ NO If yes, give licensee's name:

and license #: _____

Last

First

Middle

If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. Section 4-203.01; and complete Section 5 of this application.

All restaurant applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor.

Do you understand that 40% of your annual gross revenue must be from food sales? ☐ YES ☐ NO

SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

Check ALL boxes that apply to your licensed premises:

☒ Entrances/Exits

☒ Liquor storage areas

☐ Drive-in windows

☐ Patio enclosures

☐ Service windows

☐ Under construction: estimated completion date _____

Restaurants and Hotel/Motel applicants must explicitly depict kitchen equipment and dining facilities.

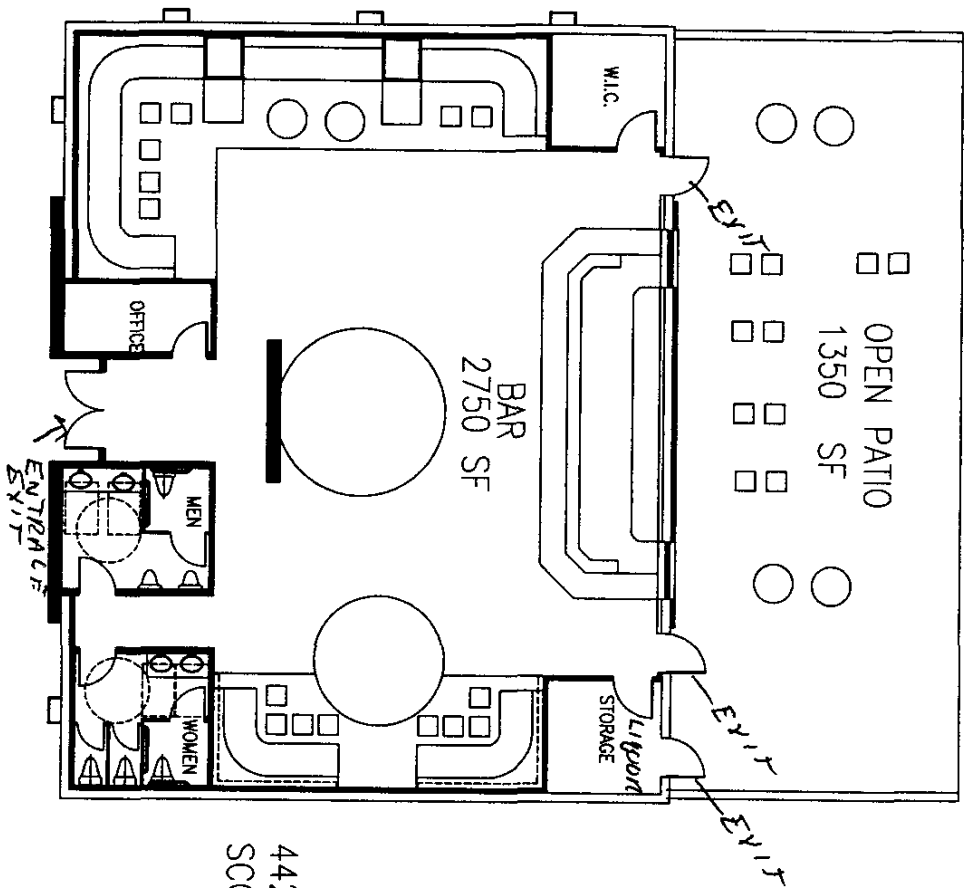
The diagram below is the only area where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored. Give the square footage or outside dimensions of the licensed premises.

DO NOT INCLUDE PARKING LOTS, LIVING QUARTERS, ETC.

See Attached

YOU MUST NOTIFY THE DEPARTMENT OF LIQUOR OF ANY CHANGES OF BOUNDARIES, ENTRANCES, EXITS, OR SERVICE WINDOWS MADE AFTER SUBMISSION OF THIS DIAGRAM.

DLLC
2003 JAN 28 P 4: 21



FLOOR PLAN
SCALE: 1/4" = 1'-0"

KEYNOTES	
BAR AREA	2750 SF
OPEN PATIO	1320 SF

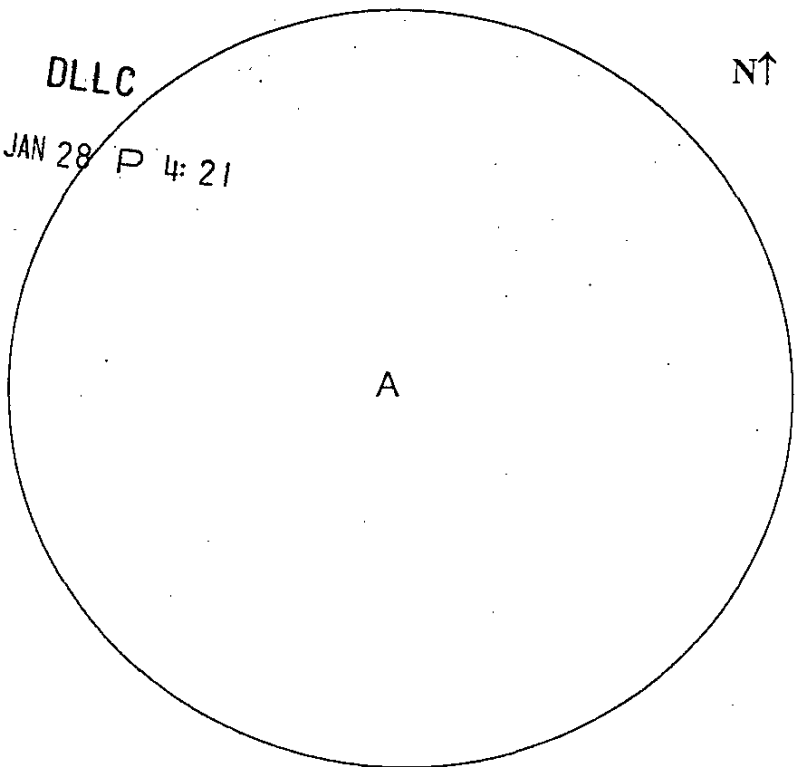
4426 N. SADDLEBAG TRAIL
SCOTTSDALE, AZ 85251

SECTION 16 Geographical Data: A SAMPLE FOR THIS SECTION IS PROVIDED ON THE BACK OF THIS PAGE.

List below the exact names of all churches, schools, and spirituous liquor outlets within a one half mile radius of your proposed location.

1. See Attached
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____

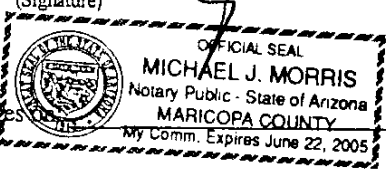
(ATTACH ADDITIONAL SHEET IF NECESSARY)



A = Your business name and identify cross streets.

SECTION 17 Signature Block:

I, Lewkowitz, H. J., declare that: 1) I am the APPLICANT (Agent/Club Member/Partner), making this
(Print name of APPLICANT/AGENT listed in Section 4 Question 1)
application; 2) I have read the application and the contents and all statements are true, correct and complete; 3) that this application is not
being made to defraud or injure any creditor, taxing authority, regulatory authority, or transferor; 4) that no other person, firm, or
corporation, except as indicated, has an interest in the spirituous liquor license for which these statements are made; and 5) that none of the
owners, partners, members, officers, directors or stockholders listed have been convicted of a felony in the past five (5) years.

X [Signature]
(Signature)

My commission expires _____

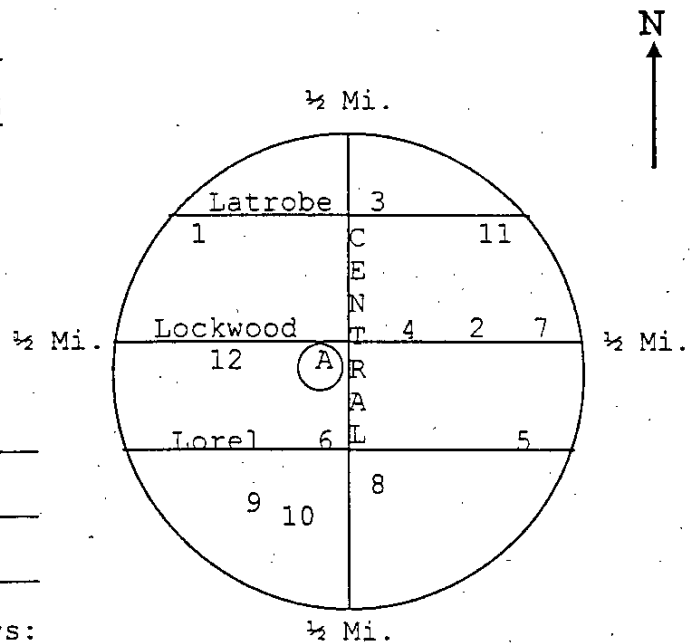
State of Arizona County of Maricopa
The foregoing instrument was acknowledged before me this
27th day of January, 2003
Day of Month Month Year
[Signature]
(Signature of NOTARY PUBLIC)

SAMPLE
GEOGRAPHICAL DATA

n the area adjacent to the map provided below indicates your proposed location
nd the exact names of all churches, schools, and alcoholic beverage outlets
ithin a 1/2 mile radius of your proposed location.
See example below)

2003 JAN 28 P 4: 21

<u> = Applicant</u>	<u>Series 12</u>
<u>1 Pink Elephants</u>	<u>Series 06</u>
<u>2 Mama's Rest.</u>	<u>Series 12</u>
<u>3 Corner Liguors</u>	<u>Series 09</u>
<u>4 Joe's Groceries</u>	<u>Series 10</u>
<u>5 Lions Club</u>	<u>Series 14</u>
<u>6 Burgers R Us</u>	<u>Series 07</u>
<u>7 Pizza Perfect</u>	<u>Series 07</u>
<u>8 Billy Bobs Bar</u>	<u>Series 06</u>
<u>9 St. Anthony's Church</u>	
<u>0 St. Anthony's School</u>	
<u>1 Burbank Middle School</u>	
<u>2 First United Baptist Church</u>	
<u>3</u>	
<u>4</u>	
<u>5</u>	

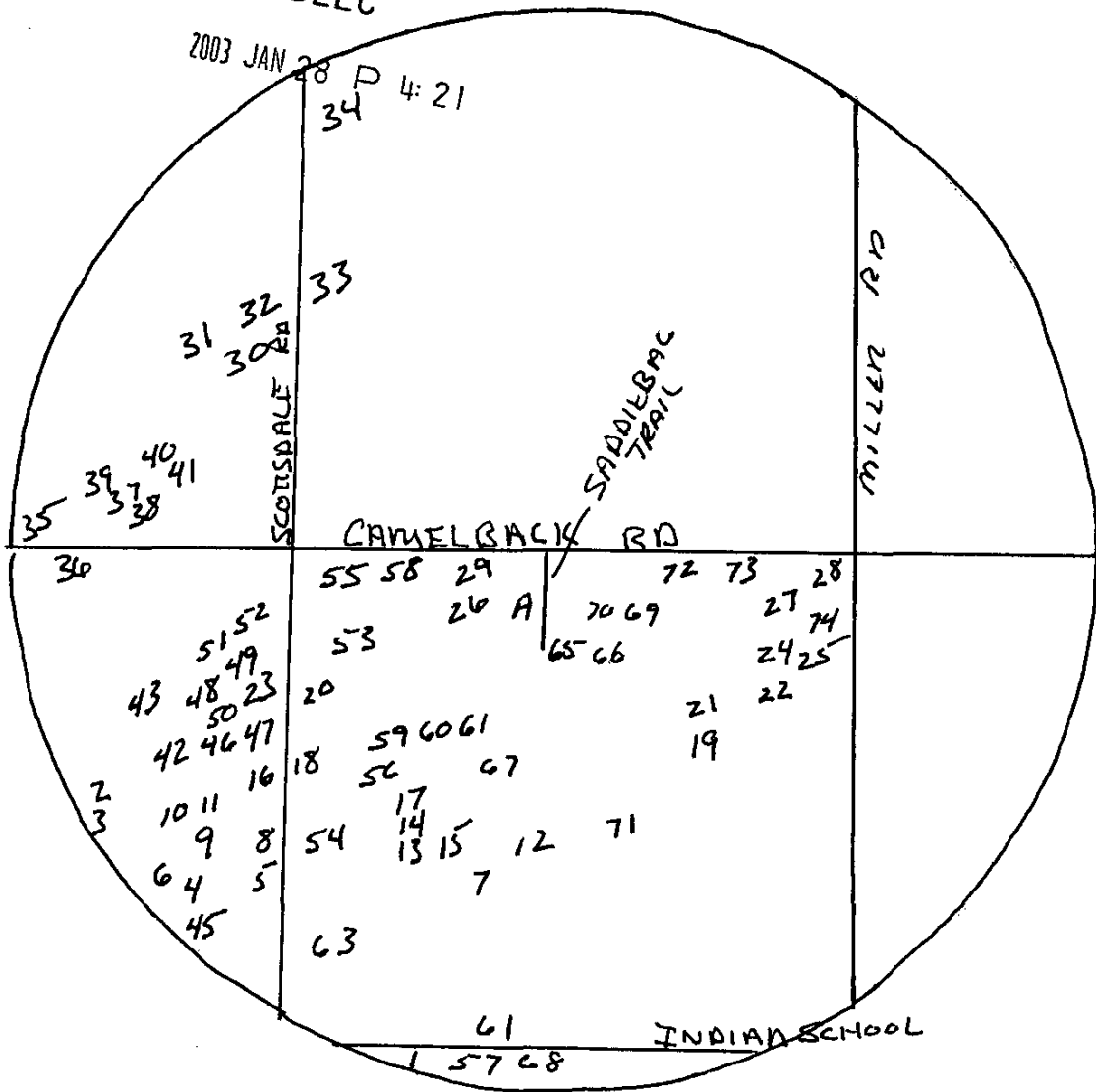


.R.S. Section 4-207.A reads as follows:

. No retailers license shall be issued for any premises which are. at the time
he license application is received by the Director, within three hundred(300)
orizental feet of a church, within three hundred(300) horizontal feet of a
ublic or private school building with kindergarten programs or any of
rades one(1) through twelve(12). or within three hundred(300) horizontal
eet of a fenced recreational area adjacent to such school building.

DLLC

2003 JAN 28 P 4:21



1	6070348	Active	GRAPEVINE	4013 N BROWN	SCOTTSDALE	85251	Bar
3	12074835	Active	DEVILS MARTINI RESTAURANT	4175 GOLDWATER BLVD STE 1	SCOTTSDALE	85251	Restrnt
2	12074702	Active	CAF'E BLUE	4175 GOLDWATER BLVD STE 2,3,4,5	SCOTTSDALE	85251	Restrnt
4	6070587	Active	DOS GRINGOS	4209 N CRAFTSMAN CT	SCOTTSDALE	85251	Bar
5	12074854	Active	TONY ROMA'S	4218 N SCOTTSDALE RD	SCOTTSDALE	85251	Restrnt
6	6070188	Active	NOYZ	4224 NORTH CRAFTSMAN COURT	SCOTTSDALE	85251	Bar
7	12074666	Active	OUTBACK STEAKHOUSE	4225 N DRINKWATER BLVD	SCOTTSDALE	85251	Restrnt
8	6070215	PndInct	VOODOO LOUNGE	4228 N SCOTTSDALE RD	SCOTTSDALE	85251	Bar
9	12074069	Active	SCOTTSDALE KEBAB MIDDLE EASTERN	4233 N SCOTTSDALE RD	SCOTTSDALE	85251	Restrnt
10	6070658	Active	COURT	4238 CRAFTSMAN CT	SCOTTSDALE	85251	Bar
11	6070449	Active	ACME BAR & GRILL	4245 N CRAFTSMAN'S CT	SCOTTSDALE	85251	Bar
12	7070678	Active	SUMMERFIELD SUITES HOTEL	4245 N DRINKWATER BLVD	SCOTTSDALE	85251	BrWnBar
13	10074186	Active	ARCADIA FINE WINE	4251 N BROWN AVE #9	SCOTTSDALE	85251	BrWnStor
14	6070334	Active	GILGIN'S	4251 N WINFIELD SCOTT PLAZA	SCOTTSDALE	85251	Bar
15	12074491	Active	BLUE AGAVE MEXICAN CANTINA	4280 N CIVIC CENTER BLVD #100	SCOTTSDALE	85251	Restrnt
16	12073615	Active	MR C'S EXQUISITE CHINESE DINING	4302 N SCOTTSDALE RD	SCOTTSDALE	85251	Restrnt
17	6070017	Active	MICKEY'S HANGOVER	4312 N BROWN AVE	SCOTTSDALE	85251	Bar
17	7070178	Active	MICKEY'S HANGOVER	4312 N BROWN AVE	SCOTTSDALE	85251	BrWnBar
18	12072227	Active	LANDRY'S PACIFIC FISH CO	4321 N SCOTTSDALE RD	SCOTTSDALE	85251	Restrnt
19	12075236	Active	DRIFT	4341 N 75TH ST	SCOTTSDALE	85251	Restrnt
20	12075183	Active	SCOTTSDALE CULINARY INSTITUTE	4343 N SCOTTSDALE RD STE 200	SCOTTSDALE	85251	Restrnt
21	12075074	Active	TEQUILA GRILL	4363 N 75TH ST	SCOTTSDALE	85251	Restrnt
22	9070505	Active	OSCO DRUG STORE #9244	4380 N MILLER RD	SCOTTSDALE	85251	LiqrStor
23	12075008	Active	IBIZA CAFE / BAR	4400 N SCOTTSDALE RD #12	SCOTTSDALE	85251	Restrnt
24	9070654	Inactive	ABCO #414	4402 N MILLER RD	SCOTTSDALE	85251	LiqrStor
25	12074282	Active	PASTA BRIONI	4416 N MILLER RD STE 702	SCOTTSDALE	85251	Restrnt
26	12075108	Active	PEARL	4425 N BUCKBOARD TRL	SCOTTSDALE	85251	Restrnt
27	12070035	Active	SUNDAY'S EATERY & SPIRITS	4432 N MILLER RD #H	SCOTTSDALE	85251	Restrnt
28	9070155	Active	CIRCLE K STORE #127	4440 N MILLER RD	SCOTTSDALE	85251	LiqrStor
29	12075073	Active	ROCKY'S GOLDEN PHOENIX	4441 N BUCKBOARD TRL	SCOTTSDALE	85251	Restrnt
30	7070653	Active	COCO'S #21	4700 N SCOTTSDALE RD	SCOTTSDALE	85251	BrWnBar
31	7070613	Active	DAYS INN SCOTTSDALE	4710 N SCOTTSDALE RD	SCOTTSDALE	85251	BrWnBar
32	12075107	Active	OPIUM	4720 N SCOTTSDALE RD	SCOTTSDALE	85251	Restrnt
33	12074301	Active	EARLS	4821 N SCOTTSDALE RD	SCOTTSDALE	85251	Restrnt
34	6070381	Active	SUNBURST HOTEL	4925 N SCOTTSDALE RD	SCOTTSDALE	85251	Bar
35	7070211	Active	NM CAFE	6900 E CAMELBACK RD	SCOTTSDALE	85251	BrWnBar
36	12075111	Active	DRINKWATERS STEAKHOUSE	6991 E CAMELBACK RD	SCOTTSDALE	85251	Restrnt
37	12071833	Active	Z' TEJAS GRILL	7000 E CAMELBACK RD	SCOTTSDALE	85251	Restrnt
38	12074149	Active	PF CHANG'S CHINA BISTRO	7014 E CAMELBACK RD	SCOTTSDALE	85251	Restrnt
39	12073979	Active	KONA GRILL	7014-559 E CAMELBACK RD	SCOTTSDALE	85251	Restrnt

40	12073118	Active	LA MADELEINE FRENCH BAKERY	7014-564 E CAMELBACK RD	SCOTTSDALE	85251	Restrnt
41	12075205	Active	NICK AND TONY'S BAR LOUIE	7014-590 E CAMELBACK RD	SCOTTSDALE	85251	Restrnt
42	12074568	Active	FLIP FLOPS BANANA BAR	7051 E 5TH AVE	SCOTTSDALE	85251	Restrnt
43	6070304	Active	MADISON'S	7108 E STETSON DR	SCOTTSDALE	85251	Bar
44	12075319	Pending	NEXT	7111 E 5TH AVE	SCOTTSDALE	85251	Restrnt
45	6070578	Active	CAJUN HOUSE OF BLUES	7117 E 3RD AVE	SCOTTSDALE	85251	Bar
46	6070490	Active	BS WEST	7125 E 5TH AVE #30	SCOTTSDALE	85251	Bar
47	7070380	Active	THYMELESS CUISINE	7125 E 5TH AVE #31	SCOTTSDALE	85251	BrWnBar
48	12073363	Active	COWBOY CIAO	7133 E STETSON DR	SCOTTSDALE	85251	Restrnt
49	6070585	Active	KAZIMIERZ WORLD WINE BAR	7137 E STETSON DR	SCOTTSDALE	85251	Bar
50	10073263	Active	6TH AVE BISTROT	7146 E 6TH AVE	SCOTTSDALE	85251	BrWnStor
50	12071997	Active	6TH AVE BISTRO	7150 E 6TH AVE	SCOTTSDALE	85251	Restrnt
51	6070573	Active	CAT EYE LOUNGE	7164 E STETSON DR	SCOTTSDALE	85251	Bar
52	12074772	Active	KYOTO RESTAURANT	7170 E STETSON	SCOTTSDALE	85251	Restrnt
53	12075063	Active	BUCKETS RESTAURANT	7216 E SHOEMAN LN	SCOTTSDALE	85251	Restrnt
54	12075283	Active	MEDIZONA	7217 E 4TH AVE	SCOTTSDALE	85251	Restrnt
55	12075242	Active	BLUE HORSE TAVERN	7243 E CAMELBACK RD	SCOTTSDALE	85251	Restrnt
56	6070197	Active	GIBSONS MARTINI RANCH	7295 E STETSON DR	SCOTTSDALE	85251	Bar
57	7070692	Pending	JACQUELINE'S MARKET	7303 E INDIAN SCHOOL RD	SCOTTSDALE	85251	BrWnBar
58	12073255	Active	JULIO'S TOO	7305 E CAMELBACK RD	SCOTTSDALE	85251	Restrnt
59	12074449	Active	SIX	7316 E STETSON DR #2	SCOTTSDALE	85251	Restrnt
60	6070796	Active	MALONEY'S	7318 E STETSON	SCOTTSDALE	85251	Bar
61	6070714	Active	DJ'S OF SCOTTSDALE	7320 E STETSON	SCOTTSDALE	85251	Bar
62	11073058	Active	HILTON GARDEN INN SCOTTSDALE	7324 E INDIAN SCHOOL RD	SCOTTSDALE	85251	Hotel
63	11071077	Active	MARRIOTT SUITE HOTEL	7325 E 3RD AVE	SCOTTSDALE	85251	Hotel
64	6070120	Active	SUEDE	7333 E INDIAN PLAZA	SCOTTSDALE	85251	Bar
64	12074886	Active	SUEDE	7333 E INDIAN PLAZA	SCOTTSDALE	85251	Restrnt
65	6070537	Active	SANCTUARY	7340 E SHOEMAN LN	SCOTTSDALE	85251	Bar
66	6070055	Active	AXIS & RADIUS	7340 INDIAN PLAZA	SCOTTSDALE	85251	Bar
67	12074810	Active	LUCKY SEVEN	7341 E 6TH AVE	SCOTTSDALE	85251	Restrnt
68	11073082	Active	OLD TOWN HOTEL	7353 E INDIAN SCHOOL RD	SCOTTSDALE	85251	Hotel
69	12073444	Active	BUDDHA BAR	7419 E INDIAN PLAZA #A	SCOTTSDALE	85251	Restrnt
70	12070199	Active	DOWNSIDE RISK RESTAURANT & BAR	7419 E INDIAN PLAZA #B	SCOTTSDALE	85251	Bar
71	60700520	Inactive	KAMIKAZI COAST	7443 E 6TH AVE	SCOTTSDALE	85251	Bar
72	6070707	Active	DON & CHARLIE'S	7501 E CAMELBACK RD	SCOTTSDALE	85251	Bar
73	12074837	Active	ZIPPS ON CAMELBACK	7551 E CAMELBACK RD	SCOTTSDALE	85251	Restrnt
74	12071920	Active	CHANCES ARE	7570 E 6TH AVE	SCOTTSDALE	85251	Restrnt

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

2003 JAN 28 P 4:21
Read Carefully, this instrument is a sworn document. Type or print with black ink.
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

Liquor License # _____

(If the location is currently licensed)

1. Check appropriate box → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☐ Officer ☒ Agent ☐ Manager(Only)
☐ Other (Complete Questions 1-20 & 24) Complete All Questions except # 14, 14a & 25
Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

2. Name: Lewkowitz H. J. Date of Birth:
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: Drivers License #: State: AZ
(This Will Not Become a Part of Public Records)

4. Place of Birth: New London CT USA Height: 6' 4" Weight: 210 Eyes: Br Hair: Gr
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone:

6. Name of Current or Most Recent Spouse: Lewkowitz Andrea J. Dahlman Date of Birth:
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? Arizona If Arizona, date of residency: 1929

8. Telephone number to contact you during business hours for any questions regarding this document. ()

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Pussycat Lounge Premises Phone: () pending

11. Licensed Premises Address: 4426 N. Saddlebag Trail, Scottsdale, Maricopa 85251
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
05/95	CURRENT	Lawyer	Ryan, Woodrow & Rapp, PLC 3101 No. Central Ave. #1500 Phoenix, AZ 85012

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION <

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
02/01/99	CURRENT	Own	<u> </u>	<u> </u>	<u> </u>	<u> </u>
11/90	01/01/99	Own	6350 No. 19th Street	Phoenix	AZ	85016

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? , **answer #14a below.** If NO, skip to #15. ☐ YES ☒ NO

14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☒ NO

If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you EVER been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
16. Have you EVER been convicted, fined, arrested, ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? (see attached) ☒ YES ☐ NO
19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license? ☐ YES ☒ NO
20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in this or any other state? (see attached) ☒ YES ☐ NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.

22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$_____ per month. Total debt to licensee \$_____

23. Is there a franchise agreement between you and the licensee relating to the operation or management of this business?
☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, H. J. Lewkowitz, hereby declare that I am the APPLICANT filing this questionnaire.
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

State of Arizona County of Maricopa
The foregoing instrument was acknowledged before me this

27th day of January 2003

(Signature of Applicant)

OFFICIAL SEAL

MICHAEL J. MORRIS
Notary Public - State of Arizona
MARICOPA COUNTY

My commission expires June 22, 2005

(Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION
Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): _____

Last
Middle
First

Hereby authorize the applicant to act as manager for the named liquor license.

State of _____ County of _____
The foregoing instrument was acknowledged before me this _____

X _____ day of _____, _____
(Signature of LICENSEE/AGENT) Day of Month Month Year

My commission expires on: _____
Day of Month Month Year

(Signature of NOTARY PUBLIC)

**Attachment to questionnaire of
H. J. Lewkowitz, Esq.**

2003 JAN 28 P 4: 21

Question 18:

I have never held ownership of or interest in, nor have I been an officer/director or had managerial responsibilities for any business license, professional license, liquor license or liquor license application having been rejected, denied, revoked, suspended or fined in this or any other state. I have represented clients as attorney and/or agent who have had applications denied and licenses fined, suspended or revoked.

I am a life member of the Phoenix Thunderbirds. The Thunderbirds sponsor the Phoenix Open Golf Tournament every January. The Thunderbirds were fined for infractions during the 1999 & 2000 & 2001 tournaments.

Question 20.

I held a proprietary interest in a Village Inn Pizza Parlor in Canoga Park, CA. I sold my interest in 1975.

I have served or currently serve as Attorney/Agent for hundreds of liquor licenses in the State of Arizona. In that capacity I do not, and never have, been involved in the day to day operations of the aforementioned liquor licenses.

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

DI QUESTIONNAIRE

SOCIAL SECURITY AND BIRTHDATE INFORMATION IS CONFIDENTIAL BY LAW AND CANNOT BE DISSEMINATED TO THE PUBLIC

Read Carefully, this instrument is a ~~sworn~~ document. Type or print with black ink
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # _____

If the location is currently licensed)

1. Check appropriate box → ☒ Owner ☐ Partner ☐ Stockholder ☐ Member ☐ Officer ☐ Agent ☐ Manager(Only)
☐ Other _____ (Complete Questions 1-20 & 24) (Complete All Questions except # 14, 14a & 25)
Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

2. Name: ASHER WILLIAM MICHAEL - FITZGERALD Date of Birth: _____
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: _____ Drivers License #: _____ State: CA
(This Will Not Become a Part of Public Records)

4. Place of Birth: JUNEAU ALASKA USA Height: 6-01 Weight: 180 Eyes: BLU Hair: BLN
City State Country (not county)

5. Marital Status ☒ Single ☐ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: _____

6. Name of Current or Most Recent Spouse: HA ASHER LAURA SWORTWOOD Date of Birth: _____
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? CALIFORNIA If Arizona, date of residency: _____

8. Telephone number to contact you during business hours for any questions regarding this document. (818) 728 - 9696

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: PUSSYCAT Lounge Premises Phone: (480) 481 - 3100

11. Licensed Premises Address: 4426 N SADDLEBAG TRAIL SCOTTSDALE MARICOPA 85251
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
3 / 99	CURRENT	PRESIDENT	VIVID ENT 15127 CALIFA ST VAN NUYS, CA 91411
6 / 97	2 / 99	SR. V.P	Playboy Entertainment 9242 Beverly Hills CA 90210

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION 4

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	RESIDENCE Street Address	City	State	Zip
10 / 99	CURRENT	_____	_____	_____	_____
7 / 97	10 / 99	13442 Galewood st.	Shoreman Oaks	CA	91423

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? 8, answer #14a below. If NO, skip to #15. ☐ YES ☒ NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☒ NO
- If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you EVER been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? ☐ YES ☒ NO
19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license? ☐ YES ☒ NO
20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in any other state? ☒ YES ☐ NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

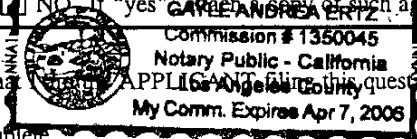
Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
- If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.
22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$ _____ per month. Total debt to licensee \$ _____
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes" ATTACH COPY OF SUCH AGREEMENT

24. I, WILLIAM ASHER, hereby declare that I am the APPLICANT filing this questionnaire.

(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.



State of California county of Los Angeles

The foregoing instrument was acknowledged before me this

31 day of October, 2003

Day of Month Month Year

My commission expires on: April 7, 2002

Day of Month Month Year

(Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION

Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): _____

Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

William Asher county of _____

The foregoing instrument was acknowledged before me this

X _____ day of _____

(Signature of LICENSEE/AGENT) Day of Month Month Year

My commission expires on: _____

Day of Month Month Year

(Signature of NOTARY PUBLIC)

DLLC

2003 JAN 28 P 4: 21

November 6, 2002

ATTN: Arizona Department of Liquor & Control

To Whom It May Concern:

In answering the question if I been a controlling person on any other Liquor License the answer is yes. I was the Corporate Secretary for Lawry's Restaurants in California from 1992 - 1994.

Sincerely,



William Asher

Lucid Entertainment 15490 Ventura Blvd. #235 Sherman Oaks, CA 91403 818/728-9696

Received Time Nov. 6. 2:43PM

STATE OF ARIZONA

DEPARTMENT OF LIQUOR LICENSES
AND CONTROL

ALCOHOLIC BEVERAGE LICENSE

License 06070420

Issue Date: 9/4/1991

Issued To:
KAREN SUE SEVILLA, Agent
Z & T INVESTMENTS INC, Owner

Location:
SEVILLA'S GOPHER CLUB
1654 E MCDOWELL RD
PHOENIX, AZ 85006

Bar

Expiration Date: 1/31/2003

Mailing Address:

KAREN SUE SEVILLA
Z & T INVESTMENTS INC
SEVILLA'S GOPHER CLUB
1654 E MCDOWELL RD
PHOENIX, AZ 85006



POST THIS LICENSE IN A CONSPICUOUS PLACE

2003 JAN 28 P 4: 21

DLCC

EXP 1/31/2003

CITY COUNCIL REPORT



MEETING DATE: April 15, 2003

ITEM NO.

2

GOAL: Preserve Character and Environment

SUBJECT

**Liquor Store Liquor License Request for Bashas #129
17-LL-2003**

REQUEST

To consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a location transfer of a series 09 (liquor store) State liquor license located within a retail grocery store.

OWNER

Bashas' Inc.

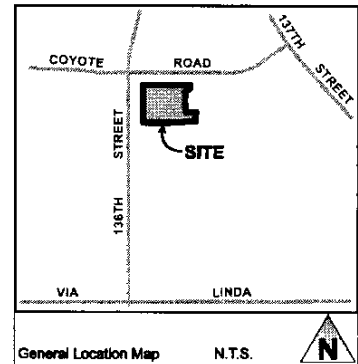
APPLICANT CONTACT

Michael Basha
480-940-6731

LOCATION

11755 N. 136th Street

BACKGROUND



This site is zoned PNC/ESL/HD (Planned Neighborhood Center/Environmentally Sensitive Lands/Hillside District).

This request is for a location transfer of a series 09 liquor license for a liquor store located within a retail grocery store. The liquor license is being transferred to this location from Bashas #43, located at 10325 E. Riggs Road, Sun Lakes, AZ. This location previously held a series 09 license and operated under the business name ABCO. This license was surrendered when ABCO ceased operations at this location.

The distance to the nearest school, Mountainside Middle School, is approximately 1 mile.

The distance to the nearest church, St. Anthony of the Desert Episcopal Church, is 4800 ft.

There is 1 liquor license within a one half mile radius of this location.

APPLICANT'S PROPOSAL

Goal/Purpose of Request.

The applicant is seeking a favorable recommendation on a series 09 (liquor store) liquor license. The applicant has maintained the required posting notice for the State mandated 20-day period.

IMPACT ANALYSIS

Police/Fire. The Police Department has conducted a review and recommends approval of this case.

(Continued)

Financial Services. Revenue Collection has reported that the applicant has met City licensing requirements and all fees have been paid.

Parking. Planning and Development Services has conducted a review of the parking requirements. Parking is in compliance with the zoning ordinance.

Development Information. This establishment is 42,449 sq. ft. The liquor sales area of this establishment is 1899 sq. ft.

Maricopa County. Maricopa County Environmental Health has reviewed this application and reported no opposition to this case.

Community involvement. No petitions or protests have been filed with the City Clerk during the 20 (twenty) day posting period.

**OPTIONS AND STAFF
RECOMMENDATION**

City Council has the option of recommending approval or denial to the Arizona Department of Liquor Licenses and Control.

Recommended Approach: The review of this application has shown that it meets zoning, parking, and public safety requirements. Staff recommends approval.

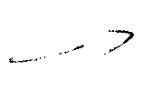
Proposed Next Steps: The City Council's recommendation of approval or denial will be forwarded to the Department of Liquor Licenses and Control for their consideration. If the application is approved by the Department of Liquor Licenses and Control, the applicant should receive their license from the State within 15 days.

**RESPONSIBLE
DEPT(S)
STAFF CONTACT(S)**

Planning and Development Services Department

Jeff Fisher
Plan Review and Permit Services Director
480-312-7619
E-mail: Jfisher@ScottsdaleAZ.Gov

APPROVED BY


Kroy Ekblaw
Planning and Development Services General Manager

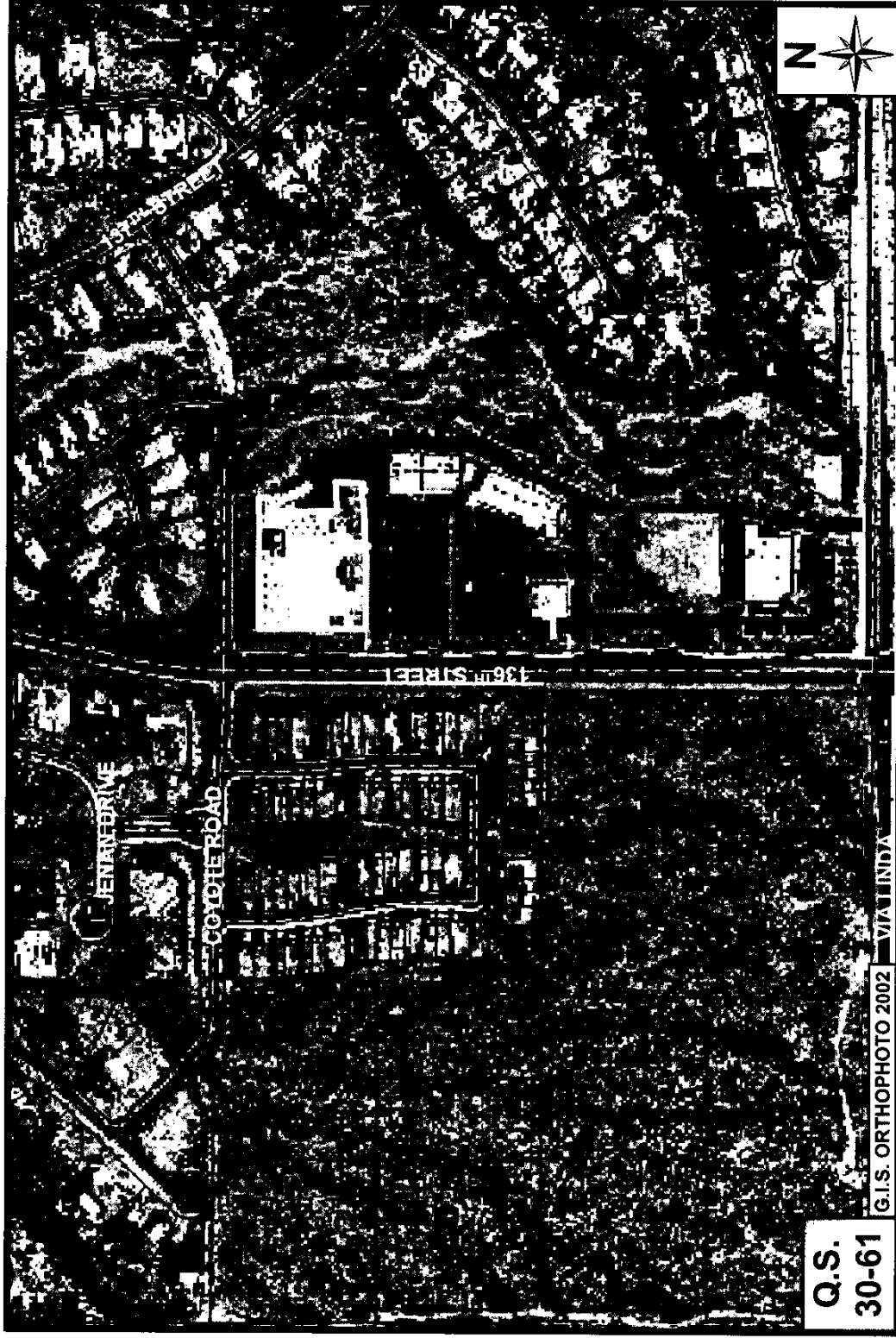

Date


Ed Gawf
Deputy City Manager


Date

ATTACHMENTS

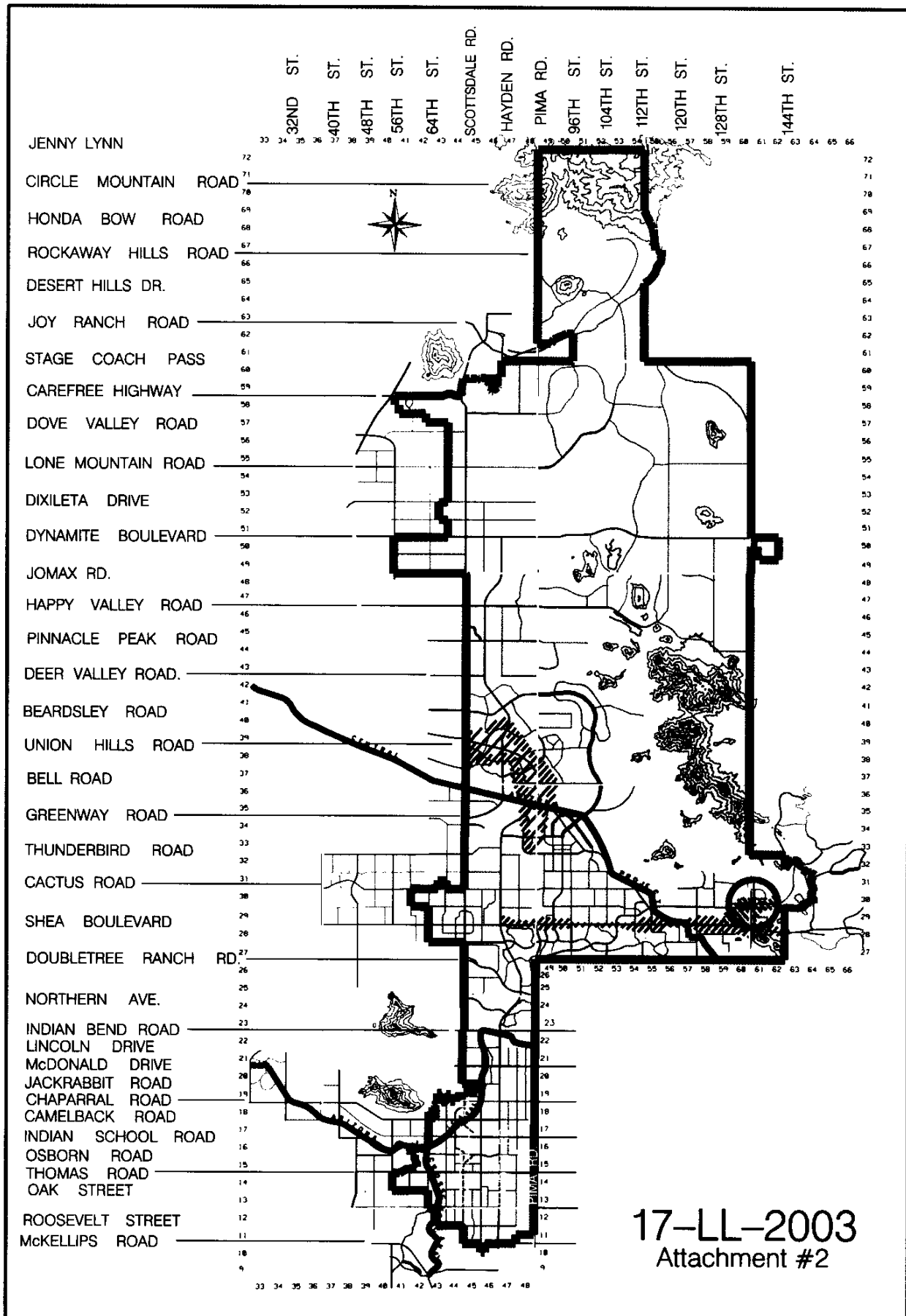
- #1: Aerial Map
- #2: Vicinity Map
- #3: Graphic – Liquor license locations within ½ mile
- #4: Application



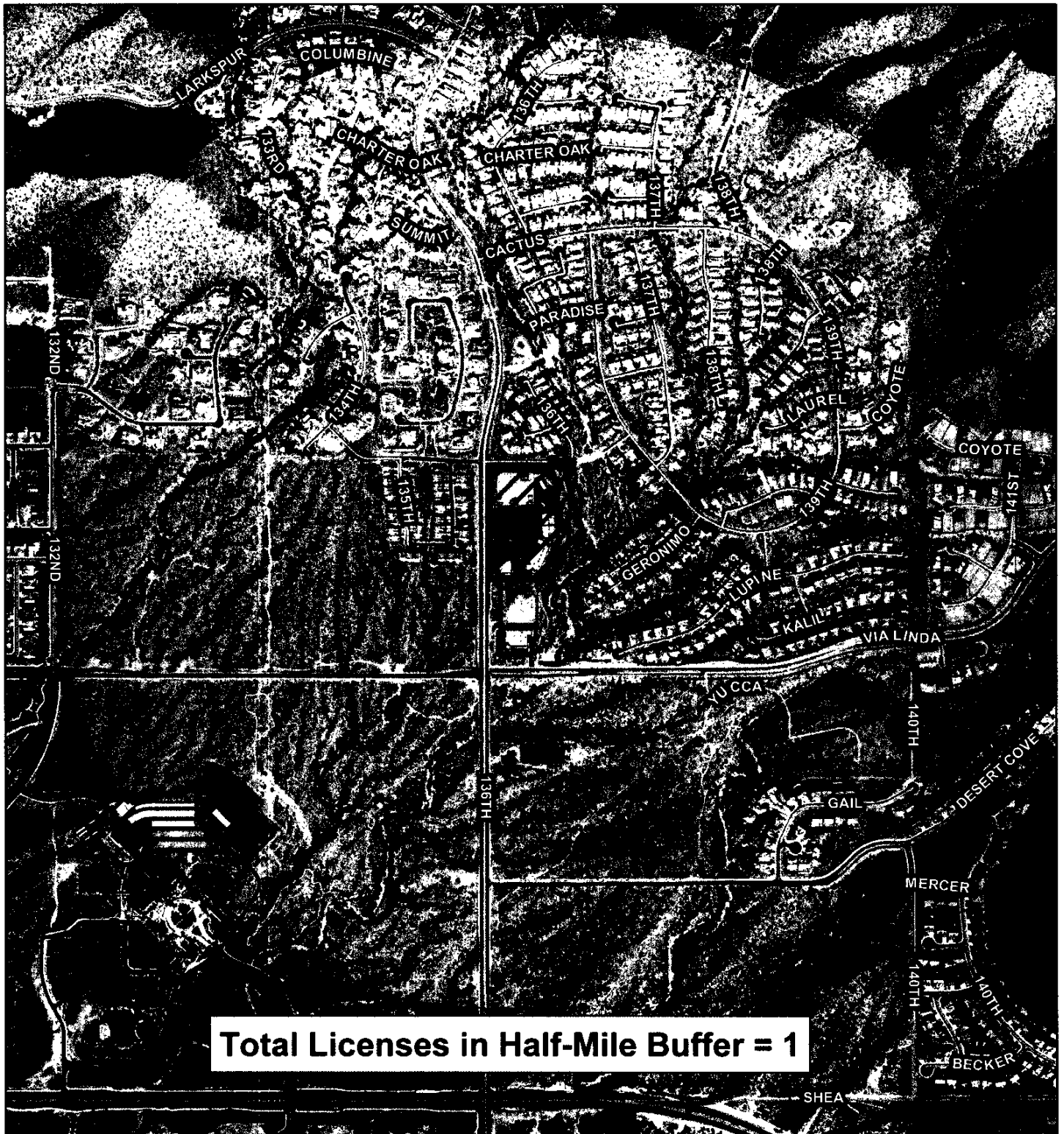
Bashas' 129

17-LL-2003

ATTACHMENT #1



Liquor Licenses Within A Half-Mile Radius of 11755 N 136th St.



Liquor Licenses.mxd
Printed: 03/10/03
Created By: Brian Hancock
Source: City of Scottsdale, State
of Arizona Dept. of Liquor Licenses
and Control.

0 275 550 1,100 1,650 2,200 Feet
1 inch equals 811.98 feet

17-LL-2003



ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

17-CC-2003

APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

SECTION 1 This application is for a:

- ☐ INTERIM PERMIT *Complete Section 5*
- ☐ NEW LICENSE *Complete Sections 2, 3, 4, 13, 14, 15, 16, 17*
- ☐ PERSON TRANSFER (Bars & Liquor Stores ONLY)
Complete Sections 2, 3, 4, 11, 13, 15, 16, 17
- ☒ LOCATION TRANSFER (Bars and Liquor Stores ONLY)
Complete Sections 2, 3, 4, 12, 13, 15, 16, 17
- ☐ PROBATE/WILL ASSIGNMENT/DIVORCE DECREE
Complete Sections 2, 3, 4, 9, 13, 15, 17 (fee not required)
- ☐ GOVERNMENT *Complete Sections 2, 3, 4, 10, 13, 15, 16, 17*

FEB 21 2003

SECTION 2 Type of ownership:

- ☐ J.T.W.R.O.S. *Complete Section 6*
- ☐ INDIVIDUAL *Complete Section 6*
- ☐ PARTNERSHIP *Complete Section 6*
- ☒ CORPORATION *Complete Section 7*
- ☐ LIMITED LIABILITY CO. *Complete Section 7*
- ☐ CLUB *Complete Section 8*
- ☐ GOVERNMENT *Complete Section 10*
- ☐ TRUST *Complete Section 6*
- ☐ OTHER Explain _____

SECTION 3 Type of license and fees:

LICENSE #: 09071013

1. Type of License: 09 2. Total fees attached: \$ 100.00

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

SECTION 4 Applicant: (All applicants must complete this section)

- Applicant/Agent's Name: Ms. BASHA MICHAEL J.
(Insert one name ONLY to appear on license) Last First Middle
- Corp./Partnership/L.L.C.: BASHA'S INC
(Exactly as it appears on Articles of Inc. or Articles of Org.)
- Business Name: BASHA'S 129
(Exactly as it appears on the exterior of premises)
- Business Address: 11755 N. 136th St Scottsdale Maricopa 85259
(Do not use PO Box Number) City COUNTY Zip
- Business Phone: (480) 940-6731 Residence Phone: unlisted
- Is the business located within the incorporated limits of the above city? YES NO
- Mailing Address: _____ City _____ State _____ Zip _____
- Enter the amount paid for a 06, 07, or 09 license: \$ _____ (Price of License ONLY)

DEPARTMENT USE ONLY

Accepted by: AE Date: 2/18/03 Lic. # 09071013

Fees: 100.00 Application Interim Permit Agent Change Club F. Prints TOTAL \$ 100.00

PROCESSING APPLICATIONS TAKES APPROXIMATELY 90 DAYS, AND CIRCUMSTANCES OFTEN RESULT IN A LONGER WAITING PERIOD.
YOU ARE CAUTIONED REGARDING PLANS FOR A GRAND OPENING, ETC., BEFORE FINAL APPROVAL AND ISSUANCE OF THE LICENSE.

SECTION 5 Interim Permit:

. If you intend to operate business while your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.

. There **MUST** be a valid license of the same type you are applying for currently issued to the location.

. Enter the license number currently at the location. _____

. Is the license currently in use? ☐ YES ☐ NO If no, how long has it been out of use? _____

ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

_____, declare that I am the **CURRENT LICENSEE** of the stated license and
(Print full name)
location. I have read this application and the contents and all statements are true, correct and complete.

(Signature)
State of _____ County of _____
The foregoing instrument was acknowledged before me this
_____ day of _____
Day of Month Month Year

My commission expires on: _____
(Signature of NOTARY PUBLIC)

SECTION 6 Individual or Partnership Owners:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Residence Address	City State Zip
			%		

Partnership Name: (Only the first partner listed will appear on license) _____

General-Limited	Last	First	Middle	% Owned	Residence Address	City State Zip
<input type="checkbox"/> <input type="checkbox"/>				%		
<input type="checkbox"/> <input type="checkbox"/>				%		
<input type="checkbox"/>				%		
<input type="checkbox"/> <input type="checkbox"/>				%		

(ATTACH ADDITIONAL SHEET IF NECESSARY)

Is any person, other than the above, going to share in the profits/losses of the business? ☐ YES ☐ NO

SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

☒ CORPORATION

Complete questions 1, 2, 3, 5, 6, 7, 8.

☐ L.L.C.

Complete questions 1, 2, 4, 5, 6, 7 and attach copy of Articles of Org. and Corporation Agreement.

1. Name of Corporation/L.L.C.:

BASHAS INC
(Exactly as it appears on Articles of Inc. or Articles of Org.)

2. Date Incorporated/Organized:

7/22/53

State where Incorporated/Organized:

AZ

3. AZ Corporation Commission File No.:

0044605-4

Date authorized to do business in AZ:

7/22/53

4. AZ L.L.C. File No.:

Date authorized to do business in AZ:

5. Is Corp./L.L.C. non-profit? ☐ YES ☒ NO If yes, give IRS tax exempt number:

6. List all directors/officers in Corporation/L.L.C.:

Last	First	Middle	Title	Residence Address	City State Zip
See attached					

(ATTACH ADDITIONAL SHEET IF NECESSARY)

7. List stockholders or controlling members owning 10% or more:

Last	First	Middle	% Owned	Residence Address	City State Zip
See attached			%		
			%		
			%		
			%		

(ATTACH ADDITIONAL SHEET IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach an ownership, and director/officer/members disclosure for the parent entity. Attach additional sheets as necessary in order to disclose real people.

SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$24 FEE FOR EACH CARD.

1. Name of Club:

(Exactly as it appears on Club Charter)

Date Chartered:

(Attach a copy of Club Charter)

2. Is club non-profit?

☐ YES

☐ NO

If yes, give IRS tax exempt number:

3. List officer and directors:

Last	First	Middle	Title	Residence Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

SECTION 9 Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store:

Current Licensee's Name: _____
Last First Middle
Exactly as it appears on license)

Assignee's Name: _____
Last First Middle

License Type: _____ License Number: **DLLC** Date of Last Renewal: _____

ATTACH TO THIS APPLICATION A CERTIFIED **2007 FEB 18 4 16:49** THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

SECTION 10 Government: (for cities, towns, or counties only)

Person to administer this license: _____
Last First Middle

Assignee's Name: _____
Last First Middle

A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.

SECTION 11 Person to Person Transfer:

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY).

1. Current Licensee's Name: _____ Entity: _____
Last First Middle (Indiv., Agent, etc.)
Exactly as it appears on license)

2. Corporation/L.L.C. Name: _____
(Exactly as it appears on license)

3. Current Business Name: _____
(Exactly as it appears on license)

4. Current Business Address: _____

5. License Type: _____ License Number: _____ Last Renewal Date: _____

6. Current Mailing Address (other than business): _____

7. Have all creditors, lien holders, interest holders, etc. been notified of this transfer? ☐ YES ☐ NO

8. Does the applicant intend to operate the business while this application is pending? ☐ YES ☐ NO If yes, complete section 5, attach fee, and current license to this application.

9. I hereby relinquish my rights to the above described license to the applicant named in this application and hereby declare that the statements made in this section are true, correct and complete.

_____, declare that I am the CURRENT LICENSEE of the stated license. I have read this

(Print full name)

application and the contents and all statements are true, correct and complete.

(Signature of CURRENT LICENSEE)

State of _____ County of _____

The foregoing instrument was acknowledged before me this

_____ day of _____
Day of Month Month Year

My commission expires on: _____

(Signature of NOTARY PUBLIC)

BASHAS' INC. OFFICERS

TITLE	NAME	ADDRESS	CITY-STATE-ZIP
PRESIDENT	WAYNE C. MANNING	[REDACTED]	CHANDLER, AZ 85248
CHIEF OPERATING OFFICER	EDWARD R. FELIX	[REDACTED]	MESSA, AZ 85201
Sr. VICE PRESIDENT	MICHAEL J. BASHA	[REDACTED]	PHOENIX, AZ 85048
VICE PRESIDENT/AGENT			

2003 FEB 18

BLIC

STOCKHOLDERS

STOCKHOLDERS	ADDRESS	CITY/STATE/ZIP	% OF OWNERSHIP
EDWARD N. BASHA, JR.	[REDACTED]	CHANDLER, AZ 85224	48
KAREN RUSIWAJIN	[REDACTED]	STOCKTON, CA 95204	15
CAMILLE BASHA	[REDACTED]	SCOTTSDALE, AZ 85253	12
CONSTANCE VITALB	[REDACTED]	SAN MARINO, CA 91108	12

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE.

1. Current Business Name and Address:
(Exactly as it appears on license)
2003 FEB 18 10325 E. Riggs Rd. Sun Lakes, AZ 85248
BASHAS' 129
2. New Business Name and Address:
(Do not use PO Box Number)
11755 N. 13th St. Scottsdale, AZ 85259
3. License Type: 09 License Number: 09071013 Last Renewal Date: 12/30/02
4. What date do you plan to move? 2/18/03 What date do you plan to open? 7/9/03

SECTION 13 Questions for all in-state applicants:

1. Distance to nearest school: 5808 ft. 5400 Name/Address of school: Mountainside Middle School
(Regardless of distance) 11256 N. 128th St. Scottsdale, AZ 85259
2. Distance to nearest church: 6336 ft. 4800 Name/Address of church: St Anthony on the Desert Episcopal Church
(Regardless of distance) 12990 E. Shea, Scottsdale, AZ 85259
3. I am the: ☒ LESSEE ☐ SUBLESSEE ☐ OWNER ☐ PURCHASER (of premises)
4. If the premises is leased give lessors name and address: Abart Properties, 1464 N. Kierland Blvd., Suite 340, Scottsdale, AZ 85259
- 4a. Monthly rental/lease rate \$ 37,793.00 What is the remaining length of the lease? 20 yrs. _____ mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ _____ or other right to terminate
(give details - attach additional sheet if necessary)
5. What is the total **business** indebtedness of the applicant for this license/location excluding lease? \$ 0

Does any one creditor represent more than 10% of that sum? ☐ YES ☒ NO If yes, list below. Total must equal 100%.

Last	First	Middle	% Owed	Residence Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for? (BE SPECIFIC) Retail Grocery
7. Has a license, or a transfer license for the premises on this application been denied by the state within the past one (1) year?
☐ YES ☒ NO If yes, attach explanation.
8. Does any spirituous liquor manufacturer, wholesaler, or employee, have any interest in your business? ☐ YES ☒ NO
9. Is the premises currently licensed with a liquor license? ☐ YES ☒ NO If yes, give license number and licensee's name:
License # _____ (Exactly as it appears on license) Name _____

SECTION 14 Restaurant, or Hotel-Motel Applicants:

Is there a valid restaurant or hotel-motel license at the proposed location? ☐ YES ☐ NO If yes, give licensee's name:

Last First Middle and license #:

If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. Section 4-203.01; and complete Section 5 of this application.

All restaurant applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor.

Do you understand that 40% of your annual gross revenue must be from food sales? ☒ YES ☐ NO

SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

Check ALL boxes that apply to your licensed premises:

- ☒ Entrances/Exits
☐ Drive-in windows
☐ Service windows

- ☒ Liquor storage areas
☐ Patio enclosures

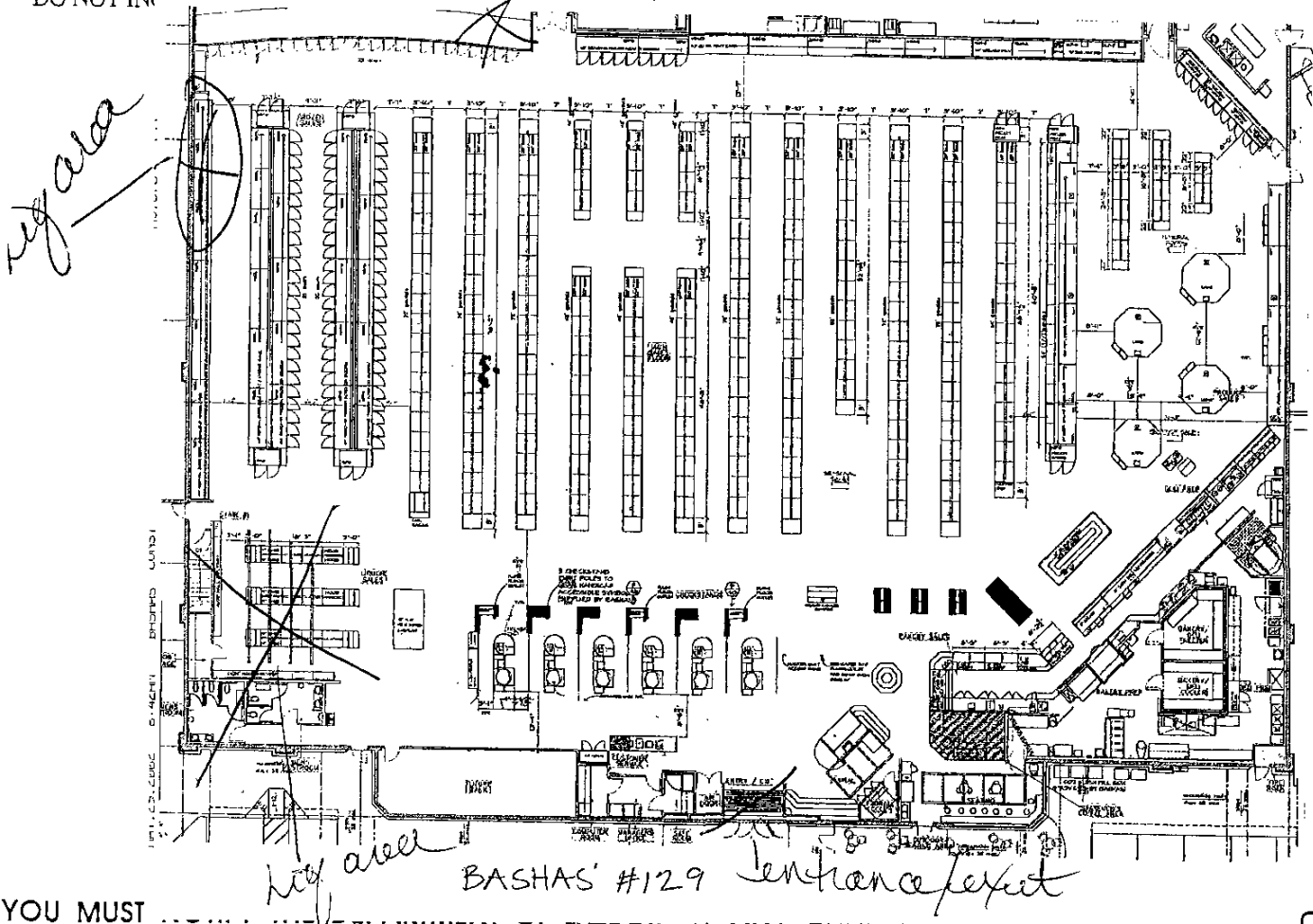
☐ Under construction: estimated completion date _____

42,449 sq ft total
1899 sq ft

2. Restaurants and Hotel/Motel applicants must explicitly depict kitchen equipment and dining facilities.

3. The diagram below is the only area where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored.
Give the square footage or outside dimensions of the licensed premises.

DO NOT IN



YOU MUST EXITS, OR SERVICE WINDOWS MADE AFTER SUBMISSION OF THIS DIAGRAM.

STATE OF ARIZONA

DEPARTMENT OF LIQUOR LICENSES
AND CONTROL

ALCOHOLIC BEVERAGE LICENSE

License 09071013

Issue Date: 1/6/1998

Expiration Date: 12/31/2003

Issued To:
MICHAEL JOSEPH BASHA, Agent
BASHAS' INC, Owner

Location:
BASHAS' #43
10325 E RIGGS RD
SUN LAKES, AZ 85248

Liquor Store

Mailing Address:

MICHAEL JOSEPH BASHA
BASHAS' INC
BASHAS' #43
PO BOX 50000
PHOENIX, AZ 85076



POST THIS LICENSE IN A CONSPICUOUS PLACE

DLLC

2003 FEB 18 A 10: 49

INACTIVE
EXP 12/31/2003

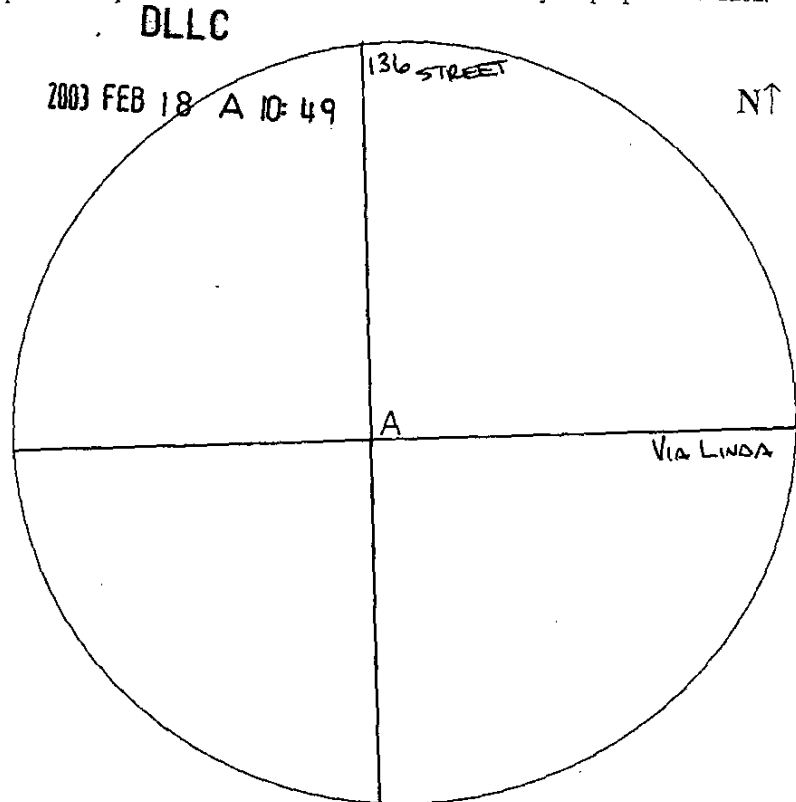
SECTION 16 Geographical Data: A SAMPLE FOR THIS SECTION IS PROVIDED ON THE BACK OF THIS PAGE.

List below the exact names of all churches, schools, and spirituous liquor outlets within a one half mile radius of your proposed location.

1. NOTHING WITHIN 1/2 MILE

2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____

(ATTACH ADDITIONAL SHEET IF NECESSARY)




A = Your business name and identify cross streets.

SECTION 17 Signature Block:

I, MICHAEL J. BASHA, declare that: 1) I am the APPLICANT (Agent/Club Member/Partner), making this
(Print name of APPLICANT/AGENT listed in Section 4 Question 1)
application; 2) I have read the application and the contents and all statements are true, correct and complete; 3) that this application is not being
made to defraud or injure any creditor, taxing authority, regulatory authority, or transferor; 4) that no other person, firm, or corporation, except
as indicated, has an interest in the spirituous liquor license for which these statements are made; and 5) that none of the owners, partners,
members, officers, directors or stockholders listed have been convicted of a felony in the past five (5) years.

[Signature]
(Signature)



commission expires on: _____

State of Arizona County of Maricopa
The foregoing instrument was acknowledged before me this
3rd day of February, 2003
Day of Month Month Year
Marilyn Chapman
(Signature of NOTARY PUBLIC)

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

QUESTIONNAIRE

FP CURRENT
5/01
AE
9/02/6775

**SOCIAL SECURITY AND BIRTHDATE INFORMATION IS CONFIDENTIAL BY LAW
AND CANNOT BE DISSEMINATED TO THE PUBLIC**

Read Carefully, this instrument is a sworn document. Type or print with black ink

An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

Liquor License # 09071013

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

(If the location is currently licensed)

1. Check appropriate box → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☐ Officer ☒ Agent ☐ Manager(Only)
☐ Other (Complete Questions 1-20 & 24) (Complete All Questions except # 14, 14a & 25)
Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

2. Name: Basha Michael Joseph Date of Birth: [REDACTED]
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: AZ
(This Will Not Become a Part of Public Records)

4. Place of Birth: Phoenix AZ U.S.A. Height: 5'7" Weight: 155 Eyes: brn Hair: brn
City State Country

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: () unlisted

6. Name of Current or Most Recent Spouse: Basha Michelle Marie Mace Date of Birth: [REDACTED]
List all for last 5 years - Use additional sheet if necessary Last First Middle Maiden

7. You are a bona fide resident of what state? AZ If Arizona, date of residency: 4/26/66

8. Telephone number to contact you during business hours for any questions regarding this document. (480) 940-6731

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Bashas' 129 Premises Phone: (480) 940-6731

11. Licensed Premises Address: 11755 N. 136th St. Scottsdale Maricopa 85259
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
6/83	CURRENT	V.P. Logistics	Bashas' Inc. P.O. Box 50000 Chandler AZ, 85224

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↓

3. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	RESIDENCE Street Address	City	State	Zip
7/95	CURRENT	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6/74	7/95	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

If you checked the Manager box on the front of this form skip to #15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? answer #14a below. If NO, skip to #15. ☐ YES ☒ NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☒ YES ☐ NO
If the answer to #14a is "NO", course must be completed before issuance of a new license or approval on an existing license.
15. Have you EVER been detained, cited, arrested, indicted or summoned in a court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? ☒ YES ☐ NO
19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involved presentation of a business, professional or liquor license? ☐ YES ☒ NO
20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? ☒ YES ☐ NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to #24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.
22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$_____ per month. Total debt to licensee \$_____
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

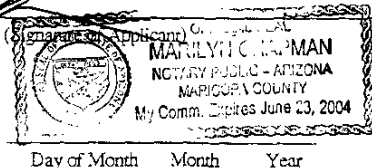
24. I, Michael J. Basha, hereby declare that I am the APPLICANT filing this questionnaire.
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

State of Arizona County of Maricopa
The foregoing instrument was acknowledged before me this

27th day of December, 2002
Day of Month Month Year

My commission expires on:



Marilyn C. Chapman
(Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): _____
Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

[Redacted Signature] State of [Redacted] County of [Redacted]
_____ day of _____, _____
Day of Month Month Year

My commission expires on: _____



2003 FEB 18 A 10:47

Arizona Department of Liquor License and Control
800 W. Washington - 5th Floor
Phoenix, Arizona 85007

Dear License Technician:

This communication is in answer to Section 5, #11 of Application Form 120 and Questionnaire Form 101 #14 for each Officer of Bashas= Inc. Listed below are violations Bashas' has received for the last two years at various locations. Violations prior to 1998 are on file at Bashas' Distribution Center, 200 S. 56th Street, Chandler, AZ 85226.

DATE	LICENSE #	STORE LOCATON	VIOLATION
December 17, 1999	09071013	Bashas' 43 - Sun Lakes	Sale to Minor
December 21, 1999	09070759	Bashas' 47 - Fountain Hills	Sale to Minor
August 2, 2000	09070254	Bashas' 84 - Gilbert	Sale to Minor

For Bashas=

Michael J. Basha
Vice President/Agent

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
1	6085 W. Chandler Blvd. Chandler, AZ 85226	MARICOPA	9070002		Dec
2	339 E. Brown Road, Mesa, AZ 85201	MARICOPA	9070044		Dec
3	3320 N. 7th Ave., Phoenix, AZ 85013	MARICOPA	9070053		Dec
FC 4	300 N. Florence, Case Grande, AZ 85222	PINAL	9110051	9110004	Aug
5	3131 E. Indian School Rd., Phoenix, AZ 85016	MARICOPA	9070029		Dec
6 Closed	5120 W. Peoria Ave., Glendale, AZ 85301	MARICOPA	Trans. To 120	9070030 - 6/19/01	Dec
7	8035 E. Indian School Rd., Scottsdale, AZ 85251	MARICOPA	9070033		Dec
8	San Carlos Ave., San Carlos, AZ 85550	RESERVATION NO LIQUOR			
9	1517 E. Bethany Home Rd., Phoenix, AZ 85014	MARICOPA	9070031		Dec
FC 10	1342 E. Main St., Mesa, AZ 85201	MARICOPA	9070032		Dec
11	4855 E. Warner Rd., Phoenix, AZ 85044	MARICOPA	9070039		Dec
FC 12	2124 E. McDowell Rd., Phoenix, AZ 85006	MARICOPA	9070034		Dec
13	7405 E. McDowell Rd., Scottsdale, AZ 85257	MARICOPA	9070035		Dec
14	1954 E. McKellips Rd., Mesa, AZ 85203	MARICOPA	9070036		Dec
15	10631 N. 32nd St., Phoenix, AZ 85028	MARICOPA	9070049		Dec
16	8423 E. McDonald Dr., Scottsdale, AZ 85250	MARICOPA	9070027		Dec
17	P.O. Box 840, Pinon, AZ 86510	RESERVATION NO LIQUOR			
18	2700 S. Woodlands Village Blvd., Flagstaff, AZ 86001	COCONINO	9030042	9030045	May
19	3115 S. McClintock Rd., Tempe, AZ 85282	MARICOPA	9070040		Dec
FC 20	4335 W. Glendale Ave., Glendale, AZ 85301	MARICOPA	9070050		Dec
21	1162 E. Florence Blvd., Casa Grande, AZ 85222	PINAL	9110005		Aug
22	10715 E. Apache Trail, Apache Junction, AZ 85220	MARICOPA	9070038		Dec
23	2806 W. Cactus Rd., Phoenix, AZ 85029	MARICOPA	9070001		Dec
24	1010 E. Broadway, Needles, CA 92363		237400		Oct
FC 25	450 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070045		Dec
FC 26	1005 N. Arizona Ave., Chandler, AZ 85225	MARICOPA	9070046		Dec
27	Topawa Rd., P.O. Box 9065, Sells, AZ 85634	RESERVATION NO LIQUOR			
28	160 Coffee Pot Dr., Sedona, AZ 86336	YAVAPAI	9130003		Aug
29	1858 W. Baseline Rd., Mesa, AZ 85202	MARICOPA	9070047		Dec
30	3360 Andy Devine, Kingman, AZ 86401	MOHAVE	9080004		July
31	Hwy 57 & Indian Service Road 9, Crownpoint, NM 87313	RESERVATION NO LIQUOR			

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
32	4727 E. Bell Rd., Suite 39, Phoenix, AZ 85032	MARICOPA	9070048		Dec
33	P.O. Box 1060 Chinle, AZ 86503	RESERVATION NO LIQUOR			
34	18785 S. I-19 Frontage Rd., Green Valley, AZ 85614	PIMA	9100130		Oct
35	P.O. Box 3120, Window Rock, AZ 86515-3120	RESERVATION NO LIQUOR			
36	P.O. Box 65, Tuba City, AZ 86045	RESERVATION NO LIQUOR			
37	1051 E. Highway 279, Cottonwood, AZ 86326	YAVAPAI	9130004		Aug
38	687 S. Lake Powell Blvd., Page, AZ 86040	COCONINO	9030004		May
39	1500 N. Park Dr., Winslow, AZ 86047	NAVAJO	9090021	9090004	May
40	2323 W. Hwy. 70, Thatcher, AZ 85552	GRAHAM	9050015		June
41 Closed	7830 N. 12th St., Phoenix, AZ 85020	MARICOPA	9070003	90700026/19/2001	Dec
42	P.O. Box 1810, Kayenta, AZ 86033	RESERVATION NO LIQUOR			
43	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9070691		Dec
44	1631 McCullough Blvd., Lake Havasu City, AZ 86403	MOHAVE	9080044		July
45	3530 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070051		Dec
46 Closed	701 N. Gilbert Rd., Gilbert, AZ 85234	MARICOPA	9070050	7/28/01	Dec
47	16605 E. Palisades, Fountain Hills, AZ 85268	MARICOPA	9070759		Dec
48	1761 E. Warner Rd., Tempe, AZ 85284	MARICOPA	9070052		Dec
49	650 W. Finne Flat Rd. Camp Verde, AZ 86322	YAVAPAI	9130005		Aug
50	6720 E. Broadway, Mesa, AZ 85206	MARICOPA	9070028		Dec
51	1122 N. Higley, Mesa, AZ 85205	MARICOPA	9070054		Dec
53	650 N. Main, Taylor, AZ 85939	NAVAJO	9090022	9090005	May
54	Nec Highway 260 & 87	GILA	9040033		June
55	275 N. Tegner St. Wickenburg, AZ 85358	MARICOPA	9070666		Dec
56 Closed	4441 S. White Mtn. Rd., Showlow, AZ 85905	NAVAJO	9090022 - Inactive	9090037 - 5/21/01	May
57	1761 E. Hwy. 69, Prescott, AZ 86301	YAVAPAI	9130424	9130049	Aug
FC 58	2250 S. Hwy. 95 #476, Bullhead, AZ 86430	MOHAVE	9080003		July
FC 59	1648 S. 16th St., Phoenix, AZ 85034	MARICOPA	9070500		Dec
FC 60	450 N. Grand Court Plaza, Nogales, AZ 85621	SANTA CRUZ	9120003		June
AJ'S 62	13226 N. 7th St., Phoenix, AZ 85022	MARICOPA	6070478		Jan
AJ'S 63	7141 E. Lincoln Dr., Scottsdale, AZ 85253	MARICOPA	9070258		Dec
AJ'S 64	5017 N. Central Ave., Phoenix, AZ 85012	MARICOPA	9070253		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE ACTIVE	LICENSE INACTIVE	RENEW DATE
65	1020 Arizona Ave., Parker, AZ 85344	LA PAZ	9150005		July
66	36889 Tom Darlington, Carefree, AZ 85377	MARICOPA	9070271		Dec
67	1000 N. Humphreys Blvd. #112, Flagstaff, AZ 86001	COCONINO	9030017		May
68	350 W. Apache Trail, Apache Junction, AZ 85220	PINAL	9110023		Aug
69	3923 N. Flowing Wells, Tucson, AZ 85705	PIMA	9100257		Oct
AJ'S 70	10105 E. Via Linda #10, Scottsdale, AZ 85258	MARICOPA	9070261		Dec
71	6900 E. Sunrise, Tucson, AZ 85750	PIMA	9100028		Oct
72	1919 E. Ray Rd., Chandler, AZ 85225	MARICOPA	9070043		Dec
73	2864 N. Power Rd., Mesa, AZ 85215	MARICOPA	9070042		Dec
AJ'S 75	23251 N. Pima Rd., Scottsdale, AZ 85255-4315	MARICOPA	9070354		Dec
76	2840 S. Alma School Rd., Chandler, AZ 85248	MARICOPA	9070272		Dec
FC 77	2950 S 6th Ave Tucson 85713	PIMA	9100107	9100107	Oct
78	P.O. Box 1660, Whiteriver, AZ 85941	RESERVATION NO LIQUOR			
79	8360 N. Thornydale Rd., Tucson, AZ 85741	PIMA	9100030		Oct
81	6760 W. Deer Valley Rd., Glendale, AZ 85310	MARICOPA	9070041		Dec
82	5311 S Superstition Mtn. Dr. Gold Canyon, AZ 85219	PINAL	9110056		Aug
FC 83	325 E. Main St., Avondale, AZ 85323	MARICOPA	9070266		Dec
84	4321 E. Baseline Rd, Gilbert, AZ 85234	MARICOPA	9070254		Dec
85	1920 W. Chandler Blvd., Chandler, AZ 85224	MARICOPA	9070478		Dec
86	100 S. Houghton Rd., Tucson, AZ 85748	PIMA	9100081		Oct
AJ'S 87	7131 W Ray Rd.Chandler, AZ 85226	MARICOPA	9070387		Dec
EDDIE'S 88	1763 E. White Mountain Blvd., Pinetop, AZ 85935	NAVAJO	9090037	9090050	May
FC 89	12321 W. Grand Ave., El Mirage, AZ 85335	MARICOPA	9070259		Dec
90	3901 E. Thunderbird Rd, Phx, AZ 85032	MARICOPA	9070473		Dec
91	105 Main Street, Bagdad, AZ 86321	YAVAPAI	9130018		Aug
92	172 Plaza, Morenci AZ 85540	GREENLEE	9060012		June
FC 93	1450 N. Dysart Rd., Avondale, AZ 85323	MARICOPA	9070700		Dec
FC 94	3442 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070644		Dec
FC 95	1940 W. Indian School Rd., Phoenix, AZ 85015	MARICOPA	9070415		Dec
FC 96	1338-40 E. Apache Boulevard, Tempe, AZ 85281	MARICOPA	9070112		Dec
97	20745 N. Scottsdale Rd., Scottsdale, AZ 85255	MARICOPA	9070128		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
99	10111 E. Bell Rd, Scottsdale, AZ 85260	MARICOPA	9070003		Dec
100	3275 N. Swan Rd., Tucson, AZ 85712	PIMA	9100131		
FC 101	1251 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070067		Dec
FC 103	4239 W. McDowell Rd. #10, Phoenix, AZ 85009	MARICOPA	9070651		Dec
FC 104	3202 E. Greenway Rd., Phoenix, AZ 85032	MARICOPA	9070737		Dec
FC 105	3514 W. Glendale Ave., Phoenix, AZ 85051	MARICOPA	9070255		Dec
FC 106	4344 W. Indian School Rd., Phoenix, AZ 85031	MARICOPA	9070731		Dec
FC 107	7227 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070269		Dec
FC 108	1799 Kiowa Ave., Lake Havasu City, AZ 85204	MOHAVE	9080019		July
FC 111	800 E. Fry Blvd., Sierra Vista, AZ 85635	COCHISE	9020058		June
FC 111	85 S. Highway 92, Sierra Vista, AZ 85635	COCHISE	9020051		June
FC 112	1300 San Antonio Ave., Douglas, AZ 85607	COCHISE	9020032		June
113	731 E. Union Hills Drive, Phoenix, AZ 85024	MARICOPA	9070037		Dec
FC 114	1240 W. 8th St., Yuma, AZ 85364	YUMA COUNTY	9140038		July
FC 115	1477 E. Apache Trail, Apache Junction, AZ 85222	PINAL	9110052		Feb
116	3200 Maricopa Ave., Lake Havasu, AZ 86406	MOHAVE	9080001		July
118	1503 E. Thompson Peak Parkway, Scottsdale 85260	MARICOPA	6070294		Dec
120	7586 W. Thunderbird Rd., Peoria, AZ 85381	MARICOPA	9070030		Dec
121	150 N. Main Street, Eagar, AZ 85925	APACHE	9010024		May
FC 124	2600 W. 16th St., Yuma, AZ 85364	YUMA COUNTY	9140046	9140004	July
125	13005 n. Oracle Rd., Tucson, AZ 85737	PIMA	9100153		Oct
FC 126	115 E. Dunlap, Phoenix, AZ 85020	MARICOPA	9070117		Dec
FC 127	23413 S. Main Street, San Luis, AZ 85349	YUMA	9140042		July
128	13940 W. Meeker Blvd., Sun City West, AZ 85378	MARICOPA	9070060		Dec
129	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9071013		Dec
FC 131	6018 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070618		Dec
FC 132	2709 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070459		Dec
FC 133	3030 E. 22nd., St., Tucson, AZ 85713	PIMA	9100225		Oct.
FC 134	1775 W. Ajo Way, Tucson, AZ 85713	PIMA	9100215		Oct.
FC 135	5114 W. McDowell, Phoenix, AZ 85035	MARICOPA	9070119		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
FC 136	1225 W. St. Mary's Rd., Tucson, AZ 85745	PIMA	9100233		Oct.
FC 137	635 W. Valencia, Tucson, AZ 85706	PIMA	9100144		Oct.
FC 138	2036 E. Thomas Rd., Phoenix, AZ 85016	MARICOPA	9070364		Dec
FC 139	1928 W. Buckeye Rd., Phoenix, AZ	MARICOPA	9070395		Dec
FC 140	6544 W. Thomas Rd., Phoenix, AZ 85031	MARICOPA	9070372		Dec
FC 141	8040 N. 19th Ave., Phoenix, AZ 85017	MARICOPA	9070374		Dec
FC 142	6020 N. 59th Ave., Glendale, AZ 85301	MARICOPA	9070404		Dec
FC 143	4430 E. McDowell Rd., Phoenix, 85008	MARICOPA	9070616		Dec
FC 145	450 S. Country Club Dr., Mesa, 85210	MARICOPA	9070401		Dec
FC 146	4338 W. Thomas Rd., Phoenix, 85031	MARICOPA	9070109		Dec
FC 147	1830 E. Irvington, Tucson 85714	PIMA	9100116		Oct
FC 148	3205 E. McDowell Rd. #28, Phoenix 85008	MARICOPA	9070632		Dec
FC 149	6025 N. 27th Avenue #13, Phoenix 85017	MARICOPA	9070631		Dec
FC 150	8210 W. Indian School Rd, Phoenix 85033	MARICOPA	9070646		Dec
FC 151	719 E. Ft. Lowell, Tucson 85719	PIMA	9100025		Oct
FC 152	4727 E. Southern, Phoenix 85040	MARICOPA	9070643		Dec
FC 153	5011 N. 35th Avenue, Phoenix 85017	MARICOPA	9070125		Dec

DLLC

2003 FEB 18 A 10:47

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

QUESTIONNAIRE

**SOCIAL SECURITY AND BIRTHDATE INFORMATION IS CONFIDENTIAL BY LAW
AND CANNOT BE DISSEMINATED TO THE PUBLIC**

Read Carefully, this instrument is a sworn document. Type or print with black ink

An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # 09071013

(If the location is currently licensed)

Check appropriate box → ☐ Owner ☐ Partner ☒ Stockholder ☐ Member ☐ Officer ☐ Agent ☐ Manager (Only)
☐ Other _____ (Complete Questions 1-20 & 24) (Complete All Questions except # 14, 14a & 25)
Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

1. Name: Rishwain Karen S. Date of Birth: [REDACTED]
Last First Middle (This Will Not Become a Part of Public Records)

2. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: CA
(This Will Not Become a Part of Public Records)

3. Place of Birth: Mesa AZ U.S.A Height: 5'4" Weight: 145 Eyes: Blu Hair: Brn
City State Country

4. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: [REDACTED]

5. Name of Current or Most Recent Spouse: Rishwain Robert J. Date of Birth: [REDACTED]
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

6. You are a bona fide resident of what state? CA If Arizona, date of residency: _____

Telephone number to contact you during business hours for any questions regarding this document: [REDACTED]

7. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

8. Name of Licensed Premises: Bashas' 129 Premises Phone: (480) 940-6731

9. Licensed Premises Address: 11755 N. 136th St. Scottsdale Maricopa 85259
Street Address (Do not use PO Box #) City Country Zip

10. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
7/75	CURRENT	President	RJR Development, Inc. 2800 W. March Lane, Suite 3160 Stockton, CA 95219

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↑

11. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	RESIDENCE Street Address	City	State	Zip
12/78	CURRENT	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? _____, answer #14a below If NO, skip to #15. ☐ YES ☒ NO

14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to # 14a is "NO", course must be completed **BEFORE** issuance of a new license or approval on an existing license.

15. Have you **EVER** been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO

16. Have you **EVER** been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO

17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? ☒ YES ☐ NO
See attached

19. Has anyone **EVER** filed suit or obtained a judgment against you in a civil action, the subject of which involved fraud or misrepresentation of a business, professional or liquor license? ☐ YES ☒ NO

20. Are you **NOW** or have you **EVER** held ownership, been a controlling person, been an officer, member, director, or manager on any other liquor license in any state? ☒ YES ☐ NO
See attached

If any answer to Questions 15 through 20 is "YES", YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to #21 is "NO" course must be completed **BEFORE ISSUANCE** of a new license **OR APPROVAL** on an existing license.

22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$ _____ per month. Total debt to licensee \$ _____

23. Is there a written agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Karen S. Rishwain, hereby declare that I am the APPLICANT filing this questionnaire.
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

Karen S. Rishwain
(Signature of Applicant)

State of Arizona County of Maricopa
The foregoing instrument was acknowledged before me this 27th day of December, 2002
Day of Month Year

Marilyn C. Chapman
(Signature of NOTARY PUBLIC)

My commission expires on: _____
Day of Month Month Year

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): _____
Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

[Signature] of _____
The foregoing instrument was acknowledged before me this _____ day of _____, _____
X _____
(Signature of LICENSEE/AGENT) Day of Month Month Year

My commission expires on: _____



2003 FEB 18 A 10:47

Arizona Department of Liquor License and Control
800 W. Washington - 5th Floor
Phoenix, Arizona 85007

Dear License Technician:

This communication is in answer to Section 5, #11 of Application Form 120 and Questionnaire Form 101 #14 for each Officer of Bashas= Inc. Listed below are violations Bashas' has received for the last two years at various locations. Violations prior to 1998 are on file at Bashas' Distribution Center, 200 S. 56th Street, Chandler, AZ 85226.

DATE	LICENSE #	STORE LOCATION	VIOLATION
December 17, 1999	09071013	Bashas' 43 - Sun Lakes	Sale to Minor
December 21, 1999	09070759	Bashas' 47 - Fountain Hills	Sale to Minor
August 2, 2000	09070254	Bashas' 84 - Gilbert	Sale to Minor

For Bashas=

Michael J. Basha
Vice President/Agent

BASHAS' LIQUOR LICENSES
7/11/02

STORE#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
1	6085 W. Chandler Blvd. Chandler, AZ 85226	MARICOPA	9070002		Dec
2	339 E. Brown Road, Mesa, AZ 85201	MARICOPA	9070044		Dec
3	3320 N. 7th Ave., Phoenix, AZ 85013	MARICOPA	9070053		Dec
FC 4	300 N. Florence, Casa Grande, AZ 85222	PINAL	9110051	9110004	Aug
5	3131 E. Indian School Rd., Phoenix, AZ 85016	MARICOPA	9070029		Dec
6 Closed	5120 W. Peoria Ave., Glendale, AZ 85301	MARICOPA	Trans. To 120	9070030 - 6/19/01	Dec
7	8035 E. Indian School Rd., Scottsdale, AZ 85251	MARICOPA	9070033		Dec
8	San Carlos Ave., San Carlos, AZ 85550	RESERVATION NO LIQUOR			
9	1517 E. Bethany Home Rd., Phoenix, AZ 85014	MARICOPA	9070031		Dec
FC 10	1342 E. Main St., Mesa, AZ 85201	MARICOPA	9070032		Dec
11	4855 E. Warner Rd., Phoenix, AZ 85044	MARICOPA	9070039		Dec
FC 12	2124 E. McDowell Rd., Phoenix, AZ 85006	MARICOPA	9070034		Dec
13	7405 E. McDowell Rd., Scottsdale, AZ 85257	MARICOPA	9070035		Dec
14	1954 E. McKellips Rd., Mesa, AZ 85203	MARICOPA	9070036		Dec
15	10631 N. 32nd St., Phoenix, AZ 85028	MARICOPA	9070049		Dec
16	8423 E. McDonald Dr., Scottsdale, AZ 85250	MARICOPA	9070027		Dec
17	P.O. Box 840, Pinon, AZ 86510	RESERVATION NO LIQUOR			
18	2700 S. Woodlands Village Blvd., Flagstaff, AZ 86001	COCONINO	9030042	9030045	May
19	3115 S. McClintock Rd., Tempe, AZ 85282	MARICOPA	9070040		Dec
FC 20	4335 W. Glendale Ave., Glendale, AZ 85301	MARICOPA	9070050		Dec
21	1162 E. Florence Blvd., Casa Grande, AZ 85222	PINAL	9110005		Aug
22	10715 E. Apache Trail, Apache Junction, AZ 85220	MARICOPA	9070038		Dec
23	2806 W. Cactus Rd., Phoenix, AZ 85029	MARICOPA	9070001		Dec
24	1010 E. Broadway, Needles, CA 92363		237400		Oct
FC 25	450 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070045		Dec
FC 26	1005 N. Arizona Ave., Chandler, AZ 85225	MARICOPA	9070046		Dec
27	Topawa Rd., P.O. Box 9065, Sells, AZ 85634	RESERVATION NO LIQUOR			
28	160 Coffee Pot Dr., Sedona, AZ 86336	YAVAPAI	9130003		Aug
29	1858 W. Baseline Rd., Mesa, AZ 85202	MARICOPA	9070047		Dec
30	3360 Andy Devine, Kingman, AZ 86401	MOHAVE	9080004		July
31	Hwy 57 & Indian Service Road 9, Crownpoint, NM 87313	RESERVATION NO LIQUOR			

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
32	4727 E. Bell Rd., Suite 39, Phoenix, AZ 85032	MARICOPA	9070048		Dec
33	P.O. Box 1060 Chinle, AZ 86503		RESERVATION NO LIQUOR		
34	18785 S. I-19 Frontage Rd., Green Valley, AZ 85614	PIMA	9100130		Oct
35	P.O. Box 3120, Window Rock, AZ 86515-3120		RESERVATION NO LIQUOR		
36	P.O. Box 65, Tuba City, AZ 86045		RESERVATION NO LIQUOR		
37	1051 E. Highway 279, Cottonwood, AZ 86326	YAVAPAI	9130004		Aug
38	687 S. Lake Powell Blvd., Page, AZ 86040	COCONINO	9030004		May
39	1500 N. Park Dr., Winslow, AZ 86047	NAVAJO	9090021	9090004	May
40	2323 W. Hwy. 70, Thatcher, AZ 85552	GRAHAM	9050015		June
41 Closed	7830 N. 12th St., Phoenix, AZ 85020	MARICOPA	9070003	90700026/19/2001	Dec
42	P.O. Box 1810, Kayenta, AZ 86033		RESERVATION NO LIQUOR		
43	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9070691		Dec
44	1631 McCullough Blvd., Lake Havasu City, AZ 86403	MOHAVE	9080044		July
45	3530 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070051		Dec
46 Closed	701 N. Gilbert Rd., Gilbert, AZ 85234	MARICOPA	9070050	7/28/01	Dec
47	16605 E. Palisades, Fountain Hills, AZ 85268	MARICOPA	9070759		Dec
48	1761 E. Warner Rd., Tempe, AZ 85284	MARICOPA	9070052		Dec
49	650 W. Finne Flat Rd. Camp Verde, AZ 86322	YAVAPAI	9130005		Aug
50	6720 E. Broadway, Mesa, AZ 85206	MARICOPA	9070028		Dec
51	1122 N. Higley, Mesa, AZ 85205	MARICOPA	9070054		Dec
53	650 N. Main, Taylor, AZ 85939	NAVAJO	9090022	9090005	May
54	Nec Highway 260 & 87	GILA	9040033		June
55	275 N. Tegner St, Wickenburg, AZ 85358	MARICOPA	9070666		Dec
56 Closed	4441 S. White Mtn. Rd., Showlow, AZ 85905	NAVAJO	9090022 - Inactive	9090037 - 5/21/01	May
57	1761 E. Hwy. 69, Prescott, AZ 86301	YAVAPAI	9130424	9130049	Aug
FC 58	2250 S. Hwy. 95 #476, Bullhead, AZ 86430	MOHAVE	9080003		July
FC 59	1648 S. 16th St., Phoenix, AZ 85034	MARICOPA	9070500		Dec
FC 60	450 N. Grand Court Plaza, Nogales, AZ 85621	SANTA CRUZ	9120003		June
AJ'S 62	13226 N. 7th St., Phoenix, AZ 85022	MARICOPA	6070478		Jan
AJ'S 63	7141 E. Lincoln Dr., Scottsdale, AZ 85253	MARICOPA	9070258		Dec
AJ'S 64	5017 N. Central Ave., Phoenix, AZ 85012	MARICOPA	9070253		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
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66	36889 Tom Darlington, Carefree, AZ 85377	MARICOPA	9070271		Dec
67	1000 N. Humphreys Blvd. #112, Flagstaff, AZ 86001	COCONINO	9030017		May
68	350 W. Apache Trail, Apache Junction, AZ 85220	PINAL	9110023		Aug
69	3923 N. Flowing Wells, Tucson, AZ 85705	PIMA	9100257		Oct
AJ'S 70	10105 E. Via Linda #10, Scottsdale, AZ 85258	MARICOPA	9070261		Dec
71	6900 E. Sunrise, Tucson, AZ 85750	PIMA	9100028		Oct
72	1919 E. Ray Rd., Chandler, AZ 85225	MARICOPA	9070043		Dec
73	2864 N. Power Rd., Mesa, AZ 85215	MARICOPA	9070042		Dec
AJ'S 75	23251 N. Pima Rd., Scottsdale, AZ 85255-4315	MARICOPA	9070354		Dec
76	2840 S. Alma School Rd., Chandler, AZ 85248	MARICOPA	9070272		Dec
FC 77	2950 S 6th Ave. Tucson 85713	PIMA	9100107	9100107	Oct
78	P.O. Box 1660, White River, AZ 85941	RESERVATION NO LIQUOR			2003 FEB 18
79	8360 N. Thornydale Rd., Tucson, AZ 85741	PIMA	9100030		Oct
81	6760 W. Deer Valley Rd., Glendale, AZ 85310	MARICOPA	9070041		Dec
82	5311 S Superstition Mtn. Dr. Gold Canyon, AZ 85219	PINAL	9110056		Aug
FC 83	325 E. Main St., Avondale, AZ 85323	MARICOPA	9070266		Dec
84	4321 E. Baseline Rd, Gilbert, AZ 85234	MARICOPA	9070254		Dec
85	1920 W. Chandler Blvd., Chandler, AZ 85224	MARICOPA	9070478		Dec
86	100 S. Houghton Rd., Tucson, AZ 85748	PIMA	9100081		Oct
AJ'S 87	7131 W Ray Rd Chandler, AZ 85226	MARICOPA	9070387		Dec
EDDIE'S 88	1763 E. White Mountain Blvd., Pinetop, AZ 85935	NAVAJO	9090037	9090050	May
FC 89	12321 W. Grand Ave., El Mirage, AZ 85335	MARICOPA	9070259		Dec
90	3901 E. Thunderbird Rd, Phx, AZ 85032	MARICOPA	9070473		Dec
91	105 Main Street, Bagdad, AZ 86321	YAVAPAI	9130018		Aug
92	172 Plaza, Morenci AZ 85540	GREENLEE	9060012		June
FC 93	1450 N. Dysart Rd., Avondale, AZ 85323	MARICOPA	9070700		Dec
FC 94	3442 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070644		Dec
FC 95	1940 W. Indian School Rd., Phoenix, AZ 85015	MARICOPA	9070415		Dec
FC 96	1338-40 E. Apache Boulevard, Tempe, AZ 85281	MARICOPA	9070112		Dec
97	20745 N. Scottsdale Rd., Scottsdale, AZ 85255	MARICOPA	9070128		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE INACTIVE	RENEW DATE
99	10111 E. Bell Rd, Scottsdale, AZ 85260	MARICOPA	9070003		Dec
100	3275 N. Swan Rd., Tucson, AZ 85712	PIMA	9100131		
FC 101	1251 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070067		Dec
FC 103	4239 W. McDowell Rd. #10, Phoenix, AZ 85009	MARICOPA	9070651		Dec
FC 104	3202 E. Greenway Rd., Phoenix, AZ 85032	MARICOPA	9070737		Dec
FC 105	3514 W. Glendale Ave., Phoenix, AZ 85051	MARICOPA	9070255		Dec
FC 106	4344 W. Indian School Rd., Phoenix, AZ 85031	MARICOPA	9070731		Dec
FC 107	7227 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070269		Dec
FC 108	1799 Kiowa Ave., Lake Havasu City, AZ 85204	MOHAVE	9080019		July
FC 111	800 E. Fry Blvd., Sierra Vista, AZ 85635	COCHISE	9020058		June
FC 111	85 S. Highway 92, Sierra Vista, AZ 85635	COCHISE	9020051		June
FC 112	1300 San Antonio Ave., Douglas, AZ 85607	COCHISE	9020032		June
113	731 E. Union Hills Drive, Phoenix, AZ 85024	MARICOPA	9070037		Dec
FC 114	1240 W. 8th St., Yuma, AZ 85364	YUMA COUNTY	9140038		July
FC 115	1477 E. Apache Trail, Apache Junction, AZ 85222	PINAL	9110052		Aug
116	3200 Maricopa Ave., Lake Havasu, AZ 86406	MOHAVE	9080001		July
118	1503 E. Thompson Peak Parkway, Scottsdale 85260	MARICOPA	6070294		Dec
120	7586 W. Thunderbird Rd., Peoria, AZ 85381	MARICOPA	9070030		Dec
121	150 N. Main Street, Eagar, AZ 85925	APACHE	9010024		May
FC 124	2600 W. 16th St., Yuma, AZ 85364	YUMA COUNTY	9140046	9140004	July
125	13005 n. Oracle Rd., Tucson, AZ 85737	PIMA	9100153		Oct
FC 126	115 E. Dunlap, Phoenix, AZ 85020	MARICOPA	9070117		Dec
FC 127	23413 S. Main Street, San Luis, AZ 85349	YUMA	9140042		July
128	13940 W. Meeker Blvd., Sun City West, AZ 85378	MARICOPA	9070060		Dec
129	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9071013		Dec
FC 131	6018 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070618		Dec
FC 132	2709 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070459		Dec
FC 133	3030 E. 22nd., St., Tucson, AZ 85713	PIMA	9100225		Oct.
FC 134	1775 W. Ajo Way, Tucson, AZ 85713	PIMA	9100215		Oct.
FC 135	5114 W. McDowell, Phoenix, AZ 85035	MARICOPA	9070119		Dec

BASHAS' LIQUOR LICENSES
7/11/02

TOR#	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
FC 136	1225 W. St. Mary's Rd., Tucson, AZ 85745	PIMA	9100233		Oct.
FC 137	635 W. Valencia, Tucson, AZ 85706	PIMA	9100144		Oct.
FC 138	2036 E. Thomas Rd., Phoenix, AZ 85016	MARICOPA	9070364		Dec
FC 139	1928 W. Buckeye Rd., Phoenix, AZ	MARICOPA	9070395		Dec
FC 140	6544 W. Thomas Rd., Phoenix, AZ 85031	MARICOPA	9070372		Dec
FC 141	8040 N. 19th Ave., Phoenix, AZ 85017	MARICOPA	9070374		Dec
FC 142	6020 N. 59th Ave., Glendale, AZ 85301	MARICOPA	9070404		Dec
FC 143	4430 E. McDowell Rd., Phoenix, 85008	MARICOPA	9070616		Dec
FC 145	450 S. Country Club Dr., Mesa, 85210	MARICOPA	9070401		Dec
FC 146	4338 W. Thomas Rd., Phoenix, 85031	MARICOPA	9070109		Dec
FC 147	1830 E. Irvington, Tucson 85714	PIMA	9100116		Oct
FC 148	3205 E. McDowell Rd. #28, Phoenix 85008	MARICOPA	9070632		Dec
FC 149	6025 N. 27th Avenue #13, Phoenix 85017	MARICOPA	9070631		Dec
FC 150	8210 W. Indian School Rd, Phoenix 85033	MARICOPA	9070646		Dec
FC 151	719 E. Ft. Lowell, Tucson 85719	PIMA	9100025		Oct
FC 152	4727 E. Southern, Phoenix 85040	MARICOPA	9070643		Dec
FC 153	5011 N. 35th Avenue, Phoenix 85017	MARICOPA	9070125		Dec

DLCC

2003 FEB 18 A 10:47

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

300 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

FP CURRENT
5/01
AE
P1001232

QUESTIONNAIRE

**SOCIAL SECURITY AND BIRTHDATE INFORMATION IS CONFIDENTIAL BY LAW
AND CANNOT BE DISSEMINATED TO THE PUBLIC**

Read Carefully, this instrument is a sworn document. Type or print with black ink

An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # 09071013

(If the location is currently licensed)

1. Check appropriate box → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☒ Officer ☐ Agent ☐ Manager(Only)
☐ Other _____ (Complete Questions 1-20 & 24) (Complete All Questions except # 14, 14a & 25)
Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

2. Name: Manning Wayne C. Date of Birth: [REDACTED]
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: AZ
(This Will Not Become a Part of Public Records)

4. Place of Birth: Kansas City Mo U.S.A. Height: 6'2" Weight: 215 Eyes: BLU Hair: GRY
City State Country

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: unlisted

6. Name of Current or Most Recent Spouse: Manning Sharon P. Little Date of Birth: [REDACTED]
List all for last 5 years - Use additional sheet if necessary Last First Middle Maiden

7. You are a bona fide resident of what state? AZ If Arizona, date of residency: 1961

8. Telephone number to contact you during business hours for any questions regarding this document. [REDACTED]

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Bashas' 129 Premises Phone: 480 940-6731

11. Licensed Premises Address: 1755 N. 136th St. Scottsdale Maricopa 85259
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
1967	CURRENT	Pres. Chief of Oper.	BASHAS INC. 22402 S. Basha Rd. Chandler, AZ 85248

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↓

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	RESIDENCE Street Address	City	State	Zip
10/88	CURRENT	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? answer #14a below. If NO, skip to #15. ☐ YES ☒ NO
14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to # 14a is "NO", course must be completed before issuance of a new license OR approval on an existing license.

15. Have you EVER been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO

16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO

17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? see attached ☒ YES ☐ NO

19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involves representation of a business, professional or liquor license? ☐ YES ☒ NO

20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? see attached ☒ YES ☐ NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.

22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$_____ per month. Total debt to licensee \$_____

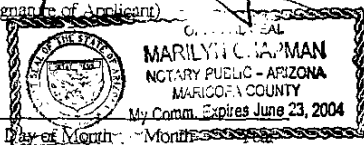
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Wayne C. Manning, hereby declare that I am the APPLICANT filing this questionnaire.
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X Wayne C. Manning State of Arizona County of Maricopa
(Signature of Applicant) The foregoing instrument was acknowledged before me this
27th day of December, 2002
Day of Month Month Year
Marilyn C. Chapman
(Signature of NOTARY PUBLIC)

My commission expires on:



FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): _____
Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

State of _____ County of _____

The foregoing instrument was acknowledged before me this

X _____ day of _____
(Signature of LICENSEE/AGENT) Day of Month Month Year

My commission expires on:

Day of Month Month Year



2003 FEB 18 A 10:47

Arizona Department of Liquor License and Control
800 W. Washington - 5th Floor
Phoenix, Arizona 85007

Dear License Technician:

This communication is in answer to Section 5, #11 of Application Form 120 and Questionnaire Form 101 #14 for each Officer of Bashas= Inc. Listed below are violations Bashas' has received for the last two years at various locations. Violations prior to 1998 are on file at Bashas' Distribution Center, 200 S. 56th Street, Chandler, AZ 85226.

DATE	LICENSE #	STORE LOCATION	VIOLATION
December 17, 1999	09071013	Bashas' 43 - Sun Lakes	Sale to Minor
December 21, 1999	09070759	Bashas' 47 - Fountain Hills	Sale to Minor
August 2, 2000	09070254	Bashas' 84 - Gilbert	Sale to Minor

For Bashas=

Michael J. Bashn
Vice President/Agent

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
1	6085 W. Chandler Blvd. Chandler, AZ 85226	MARICOPA	9070002		Dec
2	339 E. Brown Road, Mesa, AZ 85201	MARICOPA	9070044		Dec
3	3320 N. 7th Ave., Phoenix, AZ 85013	MARICOPA	9070053		Dec
FC 4	300 N. Florence, Casa Grande, AZ 85222	PINAL	9110051	9110004	Aug
5	3131 E. Indian School Rd., Phoenix, AZ 85016	MARICOPA	9070029		Dec
6 Closed	5120 W. Peoria Ave., Glendale, AZ 85301	MARICOPA	Trans. To 120	9070030 - 6/19/01	Dec
7	8035 E. Indian School Rd., Scottsdale, AZ 85251	MARICOPA	9070033		Dec
8	San Carlos Ave., San Carlos, AZ 85550	RESERVATION NO LIQUOR			
9	1517 E. Bethany Home Rd., Phoenix, AZ 85014	MARICOPA	9070031		Dec
FC 10	1342 E. Main St., Mesa, AZ 85201	MARICOPA	9070032		Dec
11	4855 E. Warner Rd., Phoenix, AZ 85044	MARICOPA	9070039		Dec
FC 12	2124 E. McDowell Rd., Phoenix, AZ 85006	MARICOPA	9070034		Dec
13	7405 E. McDowell Rd., Scottsdale, AZ 85257	MARICOPA	9070035		Dec
14	1954 E. McKellips Rd., Mesa, AZ 85203	MARICOPA	9070036		Dec
15	10631 N. 32nd St., Phoenix, AZ 85028	MARICOPA	9070049		Dec
16	8423 E. McDonald Dr., Scottsdale, AZ 85250	MARICOPA	9070027		Dec
17	P.O. Box 840, Pinon, AZ 86510	RESERVATION NO LIQUOR			
18	2700 S. Woodlands Village Blvd., Flagstaff, AZ 86001	COCONINO	9030042	9030045	May
19	3115 S. McClintock Rd., Tempe, AZ 85282	MARICOPA	9070040		Dec
FC 20	4335 W. Glendale Ave., Glendale, AZ 85301	MARICOPA	9070050		Dec
21	1162 E. Florence Blvd., Casa Grande, AZ 85222	PINAL	9110005		Aug
22	10715 E. Apache Trail, Apache Junction, AZ 85220	MARICOPA	9070038		Dec
23	2806 W. Cactus Rd., Phoenix, AZ 85029	MARICOPA	9070001		Dec
24	1010 E. Broadway, Needles, CA 92363		237400		Oct
FC 25	450 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070045		Dec
FC 26	1005 N. Arizona Ave., Chandler, AZ 85225	MARICOPA	9070046		Dec
27	Topawa Rd., P.O. Box 9065, Sells, AZ 85634	RESERVATION NO LIQUOR			
28	160 Coffee Pot Dr., Sedona, AZ 86336	YAVAPAI	9130003		Aug
29	1858 W. Baseline Rd., Mesa, AZ 85202	MARICOPA	9070047		Dec
30	3360 Andy Devine, Kingman, AZ 86401	MOHAVE	9080004		July
31	Hwy 57 & Indian Service Road 9, Crownpoint, NM 87313	RESERVATION NO LIQUOR			

BASHAS' LIQUOR LICENSES
7/11/02

STORE#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
32	4727 E. Bell Rd., Suite 39, Phoenix, AZ 85032	MARICOPA	9070048		Dec
33	P.O. Box 1060 Chinle, AZ 86503	RESERVATION NO LIQUOR			
34	18785 S. I-19 Frontage Rd., Green Valley, AZ 85614	PIMA	9100130		Oct
35	P.O. Box 3120, Window Rock, AZ 86515-3120	RESERVATION NO LIQUOR			
36	P.O. Box 65, Tuba City, AZ 86045	RESERVATION NO LIQUOR			
37	1051 E. Highway 279, Cottonwood, AZ 86326	YAVAPAI	9130004		Aug
38	687 S. Lake Powell Blvd., Page, AZ 86040	COCONINO	9030004		May
39	1500 N. Park Dr., Winslow, AZ 86047	NAVAJO	9090021	9090004	May
40	2323 W. Hwy. 70, Thatcher, AZ 85552	GRAHAM	9050015		June
41 Closed	7830 N. 12th St., Phoenix, AZ 85020	MARICOPA	9070003	90700026/19/2001	Dec
42	P.O. Box 1810, Kayenta, AZ 86033	RESERVATION NO LIQUOR			
43	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9070691		Dec
44	1631 McCullough Blvd., Lake Havasu City, AZ 86403	MOHAVE	9080044		July
45	3530 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070051		Dec
46 Closed	701 N. Gilbert Rd., Gilbert, AZ 85234	MARICOPA	9070050	7/28/01	Dec
47	16605 E. Palisades, Fountain Hills, AZ 85268	MARICOPA	9070759		Dec
48	1761 E. Warner Rd., Tempe, AZ 85284	MARICOPA	9070052		Dec
49	650 W. Finne Flat Rd. Camp Verde, AZ 86322	YAVAPAI	9130005		Aug
50	6720 E. Broadway, Mesa, AZ 85206	MARICOPA	9070028		Dec
51	1122 N. Higley, Mesa, AZ 85205	MARICOPA	9070054		Dec
53	650 N. Main, Taylor, AZ 85939	NAVAJO	9090022	9090005	May
54	Nec Highway 260 & 87	GILA	9040033		June
55	275 N. Tegner St, Wickenburg, AZ 85358	MARICOPA	9070666		Dec
56 Closed	4441 S. White Mtn. Rd., Showlow, AZ 85905	NAVAJO	9090022 - Inactive	9090037 - 5/21/01	May
57	1761 E. Hwy. 69, Prescott, AZ 86301	YAVAPAI	9130424	9130049	Aug
FC 58	2250 S. Hwy. 95 #476, Bullhead, AZ 86430	MOHAVE	9080003		July
FC 59	1648 S. 16th St., Phoenix, AZ 85034	MARICOPA	9070500		Dec
FC 60	450 N. Grand Court Plaza, Nogales, AZ 85621	SANTA CRUZ	9120003		June
AJ'S 62	13226 N. 7th St., Phoenix, AZ 85022	MARICOPA	6070478		Jan
AJ'S 63	7141 E. Lincoln Dr., Scottsdale, AZ 85253	MARICOPA	9070258		Dec
AJ'S 64	5017 N. Central Ave., Phoenix, AZ 85012	MARICOPA	9070253		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
65	1020 Arizona Ave., Parker, AZ 85344	LA PAZ	9150005		July
66	36889 Tom Darlington, Carefree, AZ 85377	MARICOPA	9070271		Dec
67	1000 N. Humphreys Blvd. #112, Flagstaff, AZ 86001	COCONINO	9030017		May
68	350 W. Apache Trail, Apache Junction, AZ 85220	PINAL	9110023		Aug
69	3923 N. Flowing Wells, Tucson, AZ 85705	PIMA	9100257		Oct
AJ'S 70	10105 E. Via Linda #10, Scottsdale, AZ 85258	MARICOPA	9070261		Dec
71	6900 E. Sunrise, Tucson, AZ 85750	PIMA	9100028		Oct
72	1919 E. Ray Rd., Chandler, AZ 85225	MARICOPA	9070043		Dec
73	2864 N. Power Rd., Mesa, AZ 85215	MARICOPA	9070042		Dec
AJ'S 75	23251 N. Pima Rd., Scottsdale, AZ 85255-4315	MARICOPA	9070354		Dec
76	2840 S. Alma School Rd., Chandler, AZ 85248	MARICOPA	9070272		Dec
FC 77	2950 S 6th Ave. Tucson 85713	PIMA	9100107	9100107	Oct
78	P.O. Box 1660, White River, AZ 85941	RESERVATION NO LIQUOR			2003 FEB 18
79	8360 N. Thornydale Rd., Tucson, AZ 85741	PIMA	9100030		Oct
81	6760 W. Deer Valley Rd., Glendale, AZ 85310	MARICOPA	9070041		Dec
82	5311 S Supersition Mtn. Dr. Gold Canyon, AZ 85219	PINAL	9110056		Aug
FC 83	325 E. Main St., Avondale, AZ 85323	MARICOPA	9070266		Dec
84	4321 E. Baseline Rd, Gilbert, AZ 85234	MARICOPA	9070254		Dec
85	1920 W. Chandler Blvd., Chandler, AZ 85224	MARICOPA	9070478		Dec
86	100 S. Houghton Rd., Tucson, AZ 85748	PIMA	9100081		Oct
AJ'S 87	7131 W Ray Rd.Chandler, AZ 85226	MARICOPA	9070387		Dec
EDDIE'S 88	1763 E. White Mountain Blvd., Pinetop, AZ 85935	NAVAJO	9090037	9090050	May
FC 89	12321 W. Grand Ave., El Mirage, AZ 85335	MARICOPA	9070259		Dec
90	3901 E. Thunderbird Rd, Phx, AZ 85032	MARICOPA	9070473		Dec
91	105 Main Street, Bagdad, AZ 86321	YAVAPAI	9130018		Aug
92	172 Plaza, Morenci AZ 85540	GREENLEE	9060012		June
FC 93	1450 N. Dysart Rd., Avondale, AZ 85323	MARICOPA	9070700		Dec
FC 94	3442 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070644		Dec
FC 95	1940 W. Indian School Rd., Phoenix, AZ 85015	MARICOPA	9070415		Dec
FC 96	1338-40 E. Apache Boulevard, Tempe, AZ 85281	MARICOPA	9070112		Dec
97	20745 N. Scottsdale Rd., Scottsdale, AZ 85255	MARICOPA	9070128		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
99	10111 E. Bell Rd, Scottsdale, AZ 85260	MARICOPA	9070003		Dec
100	3275 N. Swan Rd., Tucson, AZ 85712	PIMA	9100131		
FC 101	1251 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070067		Dec
FC 103	4239 W. McDowell Rd. #10, Phoenix, AZ 85009	MARICOPA	9070651		Dec
FC 104	3202 E. Greenway Rd., Phoenix, AZ 85032	MARICOPA	9070737		Dec
FC 105	3514 W. Glendale Ave., Phoenix, AZ 85051	MARICOPA	9070255		Dec
FC 106	4344 W. Indian School Rd., Phoenix, AZ 85031	MARICOPA	9070731		Dec
FC 107	7227 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070269		Dec
FC 108	1799 Kiowa Ave., Lake Havasu City, AZ 85204	MOHAVE	9080019		July
FC 111	800 E. Fry Blvd., Sierra Vista, AZ 85635	COCHISE	9020058		June
FC111	85 S. Highway 92, Sierra Vista, AZ 85635	COCHISE	9020051		June
FC 112	1300 San Antonio Ave., Douglas, AZ 85607	COCHISE	9020032		June
113	731 E. Union Hills Drive, Phoenix, AZ 85024	MARICOPA	9070037		Dec
FC 114	1240 W. 8th St., Yuma, AZ 85364	YUMA COUNTY	9140038		2003 FEB 18
FC 115	1477 E. Apache Trail, Apache Junction, AZ 85222	PINAL	9110052		July
116	3200 Maricopa Ave., Lake Havasu, AZ 86406	MOHAVE	9080001		Aug
118	1503 E. Thompson Peak Parkway, Scottsdale 85260	MARICOPA	6070294		July
120	7586 W. Thunderbird Rd., Peoria, AZ 85381	MARICOPA	9070030		Dec
121	150 N. Main Street, Eagar, AZ 85925	APACHE	9010024		Dec
FC 124	2600 W. 16th St., Yuma, AZ 85364	YUMA COUNTY	9140046	9140004	May
125	13005 n. Oracle Rd., Tucson, AZ 85737	PIMA	9100153		July
FC 126	115 E. Dunlap, Phoenix, AZ 85020	MARICOPA	9070117		Oct
FC 127	23413 S. Main Street, San Luis, AZ 85349	YUMA	9140042		Dec
128	13940 W. Meeker Blvd., Sun City West, AZ 85378	MARICOPA	9070060		July
129	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9071013		Dec
FC 131	6018 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070618		Dec
FC 132	2709 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070459		Dec
FC 133	3030 E. 22nd., St., Tucson, AZ 85713	PIMA	9100225		Dec
FC 134	1775 W. Ajo Way, Tucson, AZ 85713	PIMA	9100215		Oct.
FC 135	5114 W. McDowell, Phoenix, AZ 85035	MARICOPA	9070119		Oct.

BASHAS' LIQUOR LICENSES
7/11/02

TOR#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
FC 136	1225 W. St. Mary's Rd., Tucson, AZ 85745	PIMA	9100233		Oct
FC 137	635 W. Valencia, Tucson, AZ 85706	PIMA	9100144		Oct
FC 138	2036 E. Thomas Rd., Phoenix, AZ 85016	MARICOPA	9070364		Dec
FC 139	1928 W. Buckeye Rd., Phoenix, AZ	MARICOPA	9070395		Dec
FC 140	6544 W. Thomas Rd., Phoenix, AZ 85031	MARICOPA	9070372		Dec
FC 141	8040 N. 19th Ave., Phoenix, AZ 85017	MARICOPA	9070374		Dec
FC 142	6020 N. 59th Ave., Glendale, AZ 85301	MARICOPA	9070404		Dec
FC 143	4430 E. McDowell Rd., Phoenix, 85008	MARICOPA	9070616		Dec
FC 145	450 S. Country Club Dr., Mesa, 85210	MARICOPA	9070401		Dec
FC 146	4338 W. Thomas Rd., Phoenix, 85031	MARICOPA	9070109		Dec
FC 147	1830 E. Irvington, Tucson 85714	PIMA	9100116		Oct
FC 148	3205 E. McDowell Rd. #28, Phoenix 85008	MARICOPA	9070632		Dec
FC 149	6025 N. 27th Avenue #13, Phoenix 85017	MARICOPA	9070631		Dec
FC 150	8210 W. Indian School Rd, Phoenix 85033	MARICOPA	9070646		Dec
FC 151	719 E. Ft. Lowell, Tucson 85719	PIMA	9100025		Oct
FC 152	4727 E. Southern, Phoenix 85040	MARICOPA	9070643		Dec
FC 153	5011 N. 35th Avenue, Phoenix 85017	MARICOPA	9070125		Dec

DLLC
2003 FEB 18 A 10:47

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

QUESTIONNAIRE

FP CURRENT
5/01
AE
P1001230

**SOCIAL SECURITY AND BIRTHDATE INFORMATION IS CONFIDENTIAL BY LAW
AND CANNOT BE DISSEMINATED TO THE PUBLIC**

Read Carefully, this instrument is a sworn document. Type or print with black ink

An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # 09071013

(If the location is currently licensed)

1. Check appropriate box →

☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☒ Officer ☐ Agent
☐ Other _____ (Complete Questions 1-20 & 24)
Licensee or Agent must complete # 25 for a Manager

☐ Manager(Only)
(Complete All Questions *except* # 14, 14a & 25)
Licensee or Agent must complete # 25

2. Name: Felix, SR. Edward Robert Date of Birth: [REDACTED]
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: AZ
(This Will Not Become a Part of Public Records)

4. Place of Birth: Mesa AZ U.S.A. Height: 6' Weight: 190 Eyes: brn Hair: blk.
City State Country

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: [REDACTED]

6. Name of Current or Most Recent Spouse: Felix Louise Basila Date of Birth: [REDACTED]
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? AZ If Arizona, date of residency: 11/29/31

8. Telephone number to contact you during business hours for any questions regarding this document: [REDACTED]

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Bashas' 129 Premises Phone: 480-940-6731

11. Licensed Premises Address: 11755 N. 136th St. Scottsdale Maricopa 85259
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
7/82	CURRENT	SRVP. Warehousing + Distribution	BASHAS INC. 22402 S. BASHA RD. Chandler, AZ 85248

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↑

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	RESIDENCE Street Address	City	State	Zip
4/74	CURRENT	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? 16 hrs, answer #14a below. If NO, skip to #15. ☐ YES ☒ NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☒ NO
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.
15. Have you EVER been detained, cited, arrested, indicted or summoned in court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? See attached ☒ YES ☐ NO
19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involves representation of a business, professional or liquor license? ☐ YES ☒ NO
20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer or manager on any other liquor license in this or any other state? See attached ☒ YES ☐ NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.
22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$_____ per month. Total debt to licensee \$_____
23. Do you have a written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Edward R. Felix SR., hereby declare that I am the APPLICANT filing this questionnaire.
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

x Edward R. Felix SR.
(Signature of Applicant)

State of ARIZONA County of Maricopa
The foregoing instrument was acknowledged before me this
27th day of December, 2002
(Day of Month Month Year)

My commission expires on: _____
Day of Month Month Year

Marilyn Chapman
(Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): _____
Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

[Signature]
(Signature of LICENSEE/AGENT)

State of _____ County of _____
The foregoing instrument was acknowledged before me this
____ day of _____, _____
Day of Month Month Year

My commission expires on: _____



2003 FEB 18 A 10:47

Arizona Department of Liquor License and Control
800 W. Washington - 5th Floor
Phoenix, Arizona 85007

Dear License Technician:

This communication is in answer to Section 3, #11 of Application Form 120 and Questionnaire Form 101 #14 for each Officer of Bashas= Inc. Listed below are violations Bashas' has received for the last two years at various locations. Violations prior to 1998 are on file at Bashas' Distribution Center, 200 S. 56th Street, Chandler, AZ 85226.

DATE	LICENSE #	STORE LOCATION	VIOLATION
December 17, 1999	09071013	Bashas' 43 - Sun Lakes	Sale to Minor
December 21, 1999	09070759	Bashas' 47 - Fountain Hills	Sale to Minor
August 2, 2000	09070254	Bashas' 84 - Gilbert	Sale to Minor

For Bashas=

Michael J. Basha
Vice President/Agent

BASHAS' LIQUOR LICENSES
7/11/02

STORE#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
1	6085 W. Chandler Blvd. Chandler, AZ 85226	MARICOPA	9070002		Dec
2	339 E. Brown Road, Mesa, AZ 85201	MARICOPA	9070044		Dec
3	3320 N. 7th Ave., Phoenix, AZ 85013	MARICOPA	9070053		Dec
FC 4	300 N. Florence, Casa Grande, AZ 85222	PINAL	9110051	9110004	Aug
5	3131 E. Indian School Rd., Phoenix, AZ 85016	MARICOPA	9070029		Dec
6 Closed	5120 W. Peoria Ave., Glendale, AZ 85301	MARICOPA	Trans. To 120	9070030 - 6/19/01	Dec
7	8035 E. Indian School Rd., Scottsdale, AZ 85251	MARICOPA	9070033		Dec
8	San Carlos Ave., San Carlos, AZ 85550	RESERVATION NO LIQUOR			
9	1517 E. Bethany Home Rd., Phoenix, AZ 85014	MARICOPA	9070031		Dec
FC 10	1342 E. Main St., Mesa, AZ 85201	MARICOPA	9070032		Dec
11	4855 E. Warner Rd., Phoenix, AZ 85044	MARICOPA	9070039		Dec
FC 12	2124 E. McDowell Rd., Phoenix, AZ 85006	MARICOPA	9070034		Dec
13	7405 E. McDowell Rd., Scottsdale, AZ 85257	MARICOPA	9070035		Dec
14	1954 E. McKellips Rd., Mesa, AZ 85203	MARICOPA	9070036		Dec
15	10631 N. 32nd St., Phoenix, AZ 85028	MARICOPA	9070049		Dec
16	8423 E. McDonald Dr., Scottsdale, AZ 85250	MARICOPA	9070027		Dec
17	P.O. Box 840, Pinon, AZ 86510	RESERVATION NO LIQUOR			
18	2700 S. Woodlands Village Blvd., Flagstaff, AZ 86001	COCONINO	9030042	9030045	May
19	3115 S. McClintock Rd., Tempe, AZ 85282	MARICOPA	9070040		Dec
FC 20	4335 W. Glendale Ave., Glendale, AZ 85301	MARICOPA	9070050		Dec
21	1162 E. Florence Blvd., Casa Grande, AZ 85222	PINAL	9110005		Aug
22	10715 E. Apache Trail, Apache Junction, AZ 85220	MARICOPA	9070038		Dec
23	2806 W. Cactus Rd., Phoenix, AZ 85029	MARICOPA	9070001		Dec
24	1010 E. Broadway, Needles, CA 92363		237400		Oct
FC 25	450 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070045		Dec
FC 26	1005 N. Arizona Ave., Chandler, AZ 85225	MARICOPA	9070046		Dec
27	Topawa Rd., P.O. Box 9065, Sells, AZ 85634	RESERVATION NO LIQUOR			
28	160 Coffee Pot Dr., Sedona, AZ 86336	YAVAPAI	9130003		Aug
29	1858 W. Baseline Rd., Mesa, AZ 85202	MARICOPA	9070047		Dec
30	3360 Andy Devine, Kingman, AZ 86401	MOHAVE	9080004		July
31	Hwy 57 & Indian Service Road 9, Crownpoint, NM 87313	RESERVATION NO LIQUOR			

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
32	4727 E. Bell Rd., Suite 39, Phoenix, AZ 85032	MARICOPA	9070048		Dec
33	P.O. Box 1060 Chinle, AZ 86503		RESERVATION NO LIQUOR		
34	18785 S. I-19 Frontage Rd., Green Valley, AZ 85614	PIMA	9100130		Oct
35	P.O. Box 3120, Window Rock, AZ 86515-3120		RESERVATION NO LIQUOR		
36	P.O. Box 65, Tuba City, AZ 86045		RESERVATION NO LIQUOR		
37	1051 E. Highway 279, Cottonwood, AZ 86326	YAVAPAI	9130004		Aug
38	687 S. Lake Powell Blvd., Page, AZ 86040	COCONINO	9030004		May
39	1500 N. Park Dr., Winslow, AZ 86047	NAVAJO	9090021	9090004	May
40	2323 W. Hwy. 70, Thatcher, AZ 85552	GRAHAM	9050015		June
41 Closed	7830 N. 12th St., Phoenix, AZ 85020	MARICOPA	9070003	90700026/19/2001	Dec
42	P.O. Box 1810, Kayenta, AZ 86033		RESERVATION NO LIQUOR		
43	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9070691		Dec
44	1631 McCullough Blvd., Lake Havasu City, AZ 86403	MOHAVE	9080044		July
45	3530 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070051		Dec
46 Closed	701 N. Gilbert Rd., Gilbert, AZ 85234	MARICOPA	9070050	7/28/01	Dec
47	16605 E. Palisades, Fountain Hills, AZ 85268	MARICOPA	9070759		Dec
48	1761 E. Warner Rd., Tempe, AZ 85284	MARICOPA	9070052		Dec
49	650 W. Finne Flat Rd. Camp Verde, AZ 86322	YAVAPAI	9130005		Aug
50	6720 E. Broadway, Mesa, AZ 85206	MARICOPA	9070028		Dec
51	1122 N. Higley, Mesa, AZ 85205	MARICOPA	9070054		Dec
53	650 N. Main, Taylor, AZ 85939	NAVAJO	9090022	9090005	May
54	Nec Highway 260 & 87	GILA	9040033		June
55	275 N. Tegner St. Wickenburg, AZ 85358	MARICOPA	9070666		Dec
56 Closed	4441 S. White Mtn. Rd., Showlow, AZ 85905	NAVAJO	9090022 - Inactive	9090037 - 5/21/01	May
57	1761 E. Hwy. 69, Prescott, AZ 86301	YAVAPAI	9130424	9130049	Aug
FC 58	2250 S. Hwy. 95 #476, Bullhead, AZ 86430	MOHAVE	9080003		July
FC 59	1648 S. 16th St., Phoenix, AZ 85034	MARICOPA	9070500		Dec
FC 60	450 N. Grand Court Plaza, Nogales, AZ 85621	SANTA CRUZ	9120003		June
AJ'S 62	13226 N. 7th St., Phoenix, AZ 85022	MARICOPA	6070478		Jan
AJ'S 63	7141 E. Lincoln Dr., Scottsdale, AZ 85253	MARICOPA	9070258		Dec
AJ'S 64	5017 N. Central Ave., Phoenix, AZ 85012	MARICOPA	9070253		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
65	1020 Arizona Ave., Parker, AZ 85344	LA PAZ	9150005		July
66	36889 Tom Darlington, Carefree, AZ 85377	MARICOPA	9070271		Dec
67	1000 N. Humphreys Blvd. #112, Flagstaff, AZ 86001	COCONINO	9030017		May
68	350 W. Apache Trail, Apache Junction, AZ 85220	PINAL	9110023		Aug
69	3923 N. Flowing Wells, Tucson, AZ 85705	PIMA	9100257		Oct
AJ'S 70	10105 E. Via Linda #10, Scottsdale, AZ 85258	MARICOPA	9070261		Dec
71	6900 E. Sunrise, Tucson, AZ 85750	PIMA	9100028		Oct
72	1919 E. Ray Rd., Chandler, AZ 85225	MARICOPA	9070043		Dec
73	2864 N. Power Rd., Mesa, AZ 85215	MARICOPA	9070042		Dec
AJ'S 75	23251 N. Pima Rd., Scottsdale, AZ 85255-4315	MARICOPA	9070354		Dec
76	2840 S. Alma School Rd., Chandler, AZ 85248	MARICOPA	9070272		Dec
FC 77	2950 S 6th Ave. Tucson 85713	PIMA	9100107	9100107	Oct
78	P.O. Box 1660, White River, AZ 85941	RESERVATION NO LIQUOR			2003 FEB 18
79	8360 N. Thornydale Rd., Tucson, AZ 85741	PIMA	9100030		Oct
81	6760 W. Deer Valley Rd., Glendale, AZ 85310	MARICOPA	9070041		Dec
82	5311 S Superstition Mtn. Dr. Gold Canyon, AZ 85219	PINAL	9110056		Aug
FC 83	325 E. Main St., Avondale, AZ 85323	MARICOPA	9070266		Dec
84	4321 E. Baseline Rd, Gilbert, AZ 85234	MARICOPA	9070254		Dec
85	1920 W. Chandler Blvd., Chandler, AZ 85224	MARICOPA	9070478		Dec
86	100 S. Houghton Rd., Tucson, AZ 85748	PIMA	9100081		Oct
AJ'S 87	7131 W Ray Rd Chandler, AZ 85226	MARICOPA	9070387		Dec
EDDIE'S 88	1763 E. White Mountain Blvd., Pinetop, AZ 85935	NAVAJO	9090037	9090050	May
FC 89	12321 W. Grand Ave., El Mirage, AZ 85335	MARICOPA	9070259		Dec
90	3901 E. Thunderbird Rd, Phx, AZ 85032	MARICOPA	9070473		Dec
91	105 Main Street, Bagdad, AZ 86321	YAVAPAI	9130018		Aug
92	172 Plaza, Morenci AZ 85540	GREENLEE	9060012		June
FC 93	1450 N. Dysart Rd., Avondale, AZ 85323	MARICOPA	9070700		Dec
FC 94	3442 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070644		Dec
FC 95	1940 W. Indian School Rd., Phoenix, AZ 85015	MARICOPA	9070415		Dec
FC 96	1338-40 E. Apache Boulevard, Tempe, AZ 85281	MARICOPA	9070112		Dec
97	20745 N. Scottsdale Rd., Scottsdale, AZ 85255	MARICOPA	9070128		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
99	10111 E. Bell Rd, Scottsdale, AZ 85260	MARICOPA	9070003		Dec
100	3275 N. Swan Rd., Tucson, AZ 85712	PIMA	9100131		
FC 101	1251 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070067		Dec
FC 103	4239 W. McDowell Rd. #10, Phoenix, AZ 85009	MARICOPA	9070651		Dec
FC 104	3202 E. Greenway Rd., Phoenix, AZ 85032	MARICOPA	9070737		Dec
FC 105	3514 W. Glendale Ave., Phoenix, AZ 85051	MARICOPA	9070255		Dec
FC 106	4344 W. Indian School Rd., Phoenix, AZ 85031	MARICOPA	9070731		Dec
FC 107	7227 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070269		Dec
FC 108	1799 Kiowa Ave., Lake Havasu City, AZ 85204	MOHAVE	9080019		July
FC 111	800 E. Fry Blvd., Sierra Vista, AZ 85635	COCHISE	9020058		June
FC 111	85 S. Highway 92, Sierra Vista, AZ 85635	COCHISE	9020051		June
FC 112	1300 San Antonio Ave., Douglas, AZ 85607	COCHISE	9020032		June
113	731 E. Union Hills Drive, Phoenix, AZ 85024	MARICOPA	9070037		Dec
FC 114	1240 W. 8th St., Yuma, AZ 85364	YUMA COUNTY	9140038		July
FC 115	1477 E. Apache Trail, Apache Junction, AZ 85222	PINAL	9110052		Aug
116	3200 Maricopa Ave., Lake Havasu, AZ 86406	MOHAVE	9080001		July
118	1503 E. Thompson Peak Parkway, Scottsdale 85260	MARICOPA	6070294		Dec
120	7586 W. Thunderbird Rd., Peoria, AZ 85381	MARICOPA	9070030		Dec
121	150 N. Main Street, Eagar, AZ 85925	APACHE	9010024		May
FC 124	2600 W. 16th St., Yuma, AZ 85364	YUMA COUNTY	9140046	9140004	July
125	13005 n. Oracle Rd., Tucson, AZ 85737	PIMA	9100153		Oct
FC 126	115 E. Dunlap, Phoenix, AZ 85020	MARICOPA	9070117		Dec
FC 127	23413 S. Main Street, San Luis, AZ 85349	YUMA	9140042		July
128	13940 W. Meeker Blvd., Sun City West, AZ 85378	MARICOPA	9070060		Dec
129	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9071013		Dec
FC 131	6018 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070618		Dec
FC 132	2709 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070459		Dec
FC 133	3030 E. 22nd., St., Tucson, AZ 85713	PIMA	9100225		Oct.
FC 134	1775 W. Ajo Way, Tucson, AZ 85713	PIMA	9100215		Oct.
FC 135	5114 W. McDowell, Phoenix, AZ 85035	MARICOPA	9070119		Dec

BASHAS' LIQUOR LICENSES
7/11/02

TORREX	ADDRESS	COUNTY	LICENSE ACTIVE	LICENSE INACTIVE	REVIEW DATE
FC 136	1225 W. St. Mary's Rd., Tucson, AZ 85745	PIMA	9100233		Oct.
FC 137	635 W. Valencia, Tucson, AZ 85706	PIMA	9100144		Oct.
FC 138	2036 E. Thomas Rd., Phoenix, AZ 85016	MARICOPA	9070364		Dec
FC 139	1928 W. Buckeye Rd., Phoenix, AZ	MARICOPA	9070395		Dec
FC 140	6544 W. Thomas Rd., Phoenix, AZ 85031	MARICOPA	9070372		Dec
FC 141	8040 N. 19th Ave., Phoenix, AZ 85017	MARICOPA	9070374		Dec
FC 142	6020 N. 59th Ave., Glendale, AZ 85301	MARICOPA	9070404		Dec
FC 143	4430 E. McDowell Rd., Phoenix, 85008	MARICOPA	9070616		Dec
FC 145	450 S. Country Club Dr., Mesa, 85210	MARICOPA	9070401		Dec
FC 146	4338 W. Thomas Rd., Phoenix, 85031	MARICOPA	9070109		Dec
FC 147	1830 E. Irvington, Tucson 85714	PIMA	9100116		Oct
FC 148	3205 E. McDowell Rd. #28, Phoenix 85008	MARICOPA	9070632		Dec
FC 149	6025 N. 27th Avenue #13, Phoenix 85017	MARICOPA	9070631		Dec
FC 150	8210 W. Indian School Rd, Phoenix 85033	MARICOPA	9070646		Dec
FC 151	719 E. Ft. Lowell, Tucson 85719	PIMA	9100025		Oct
FC 152	4727 E. Southern, Phoenix 85040	MARICOPA	9070643		Dec
FC 153	5011 N. 35th Avenue, Phoenix 85017	MARICOPA	9070125		Dec

DLCC
2003 FEB 18 A 10:47

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141

QUESTIONNAIRE **DL LC**

400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

FP CURRENT
5/01
AK
P1021271

**SOCIAL SECURITY AND BIRTHDATE INFORMATION IS CONFIDENTIAL BY LAW
AND CANNOT BE DISSEMINATED TO THE PUBLIC**

Read Carefully, this instrument is a sworn document.

Type or print with black ink

An extensive investigation of your background will be conducted. False or incomplete answers could result
in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON
COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE
DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT
DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44-6852)

Liquor License # **09071013**

(If the location is currently licensed)

1. Check
appropriate
box →

☐ Owner ☐ Partner ☒ Stockholder ☐ Member ☐ Officer ☐ Agent
☐ Other _____ (Complete Questions 1-20 & 24)
Licensee or Agent must complete # 25 for a Manager

☐ Manager(Only)
(Complete All Questions except # 14, 14a & 25)
Licensee or Agent must complete # 25

2. Name: **Basha** **Edward** **Najieb** Date of Birth: [REDACTED]
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: **AZ**
(This Will Not Become a Part of Public Records)

4. Place of Birth: **Mesa** **AZ** **U.S.A.** Height: **5'9"** Weight: **220** Eyes: **brn** Hair: **brn**
City State Country

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: () **unlisted**

6. Name of Current or Most Recent Spouse: **Basha Nadine** **Mathis** Date of Birth: [REDACTED]
List all for last 5 years - Use additional sheet if necessary Last First Middle Maiden

7. You are a bona fide resident of what state? **AZ** If Arizona, date of residency: **8/24/37**

8. Telephone number to contact you during business hours for any questions regarding this document. [REDACTED]

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: **Bashas' 129** Premises Phone: (**480**) **940-6731**

11. Licensed Premises Address: **11755N. 136th St.** **Scottsdale** **Maricopa** **85259**
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
1978	CURRENT	COB / CEO	BASHAS INC. 22402 S. Basha Rd. Chandler, AZ 85248

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↑

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	RESIDENCE Street Address	City	State	Zip
1974	CURRENT	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? answer #14a below. If NO, skip to #15. ☐ YES ☒ NO
- 14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.
15. Have you EVER been detained, cited, arrested, indicted or imprisoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. 1961 + 1962, Wild game violation No action taken ☒ YES ☐ NO
16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO
17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO
18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? see attached ☒ YES ☐ NO
19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which involved representation of a business, professional or liquor license? ☐ YES ☒ NO
20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? see attached ☒ YES ☐ NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.
22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? \$_____ per month. Total debt to licensee \$_____
23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Edward N. Basha, Jr., hereby declare that I am the APPLICANT filing this questionnaire.
(Print full name of Applicant)

I have read this questionnaire and the contents and all statements are true, correct and complete.

X (Signature of Applicant) State of ARIZONA County of Maricopa
The foregoing instrument was acknowledged before me this 27th day of December, 2002
(Signature of NOTARY PUBLIC)
My commission expires on: June 23, 2004
Day of Month: 23 Month: June Year: 2004

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): _____
Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

(Signature of LICENSEE/AGENT) State of _____ County of _____
The foregoing instrument was acknowledged before me this _____ day of _____, _____
Day of Month Month Year

My commission expires on: _____



2003 FEB 18 A 10:47

Arizona Department of Liquor License and Control
800 W. Washington - 5th Floor
Phoenix, Arizona 85007

Dear License Technician:

This communication is in answer to Section 5, #11 of Application Form 120 and Questionnaire Form 101 #14 for each Officer of Bashas= Inc. Listed below are violations Bashas' has received for the last two years at various locations. Violations prior to 1998 are on file at Bashas' Distribution Center, 200 S. 56th Street, Chandler, AZ 85226.

DATE	LICENSE #	STORE LOCATION	VIOLATION
December 17, 1999	09071013	Bashas' 43 - Sun Lakes	Sale to Minor
December 21, 1999	09070759	Bashas' 47 - Fountain Hills	Sale to Minor
August 2, 2000	09070254	Bashas' 84 - Gilbert	Sale to Minor

For Bashas=

Michael J. Basha
Vice President/Agent

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
1	6085 W. Chandler Blvd. Chandler, AZ 85226	MARICOPA	9070002		Dec
2	339 E. Brown Road, Mesa, AZ 85201	MARICOPA	9070044		Dec
3	3320 N. 7th Ave., Phoenix, AZ 85013	MARICOPA	9070053		Dec
FC 4	300 N. Florence, Case Grande, AZ 85222	PINAL	9110051	9110004	Aug
5	3131 E. Indian School Rd., Phoenix, AZ 85016	MARICOPA	9070029		Dec
6 Closed	5120 W. Peoria Ave., Glendale, AZ 85301	MARICOPA	Trans. To 120	9070030 - 6/19/01	Dec
7	8035 E. Indian School Rd., Scottsdale, AZ 85251	MARICOPA	9070033		Dec
8	San Carlos Ave., San Carlos, AZ 85550	RESERVATION NO LIQUOR			
9	1517 E. Bethany Home Rd., Phoenix, AZ 85014	MARICOPA	9070031		Dec
FC 10	1342 E. Main St., Mesa, AZ 85201	MARICOPA	9070032		Dec
11	4855 E. Warner Rd., Phoenix, AZ 85044	MARICOPA	9070039		Dec
FC 12	2124 E. McDowell Rd., Phoenix, AZ 85006	MARICOPA	9070034		Dec
13	7405 E. McDowell Rd., Scottsdale, AZ 85257	MARICOPA	9070035		Dec
14	1954 E. McKellips Rd., Mesa, AZ 85203	MARICOPA	9070036		Dec
15	10631 N. 32nd St., Phoenix, AZ 85028	MARICOPA	9070049		Dec
16	8423 E. McDonald Dr., Scottsdale, AZ 85250	MARICOPA	9070027		Dec
17	P.O. Box 840, Pinon, AZ 86510	RESERVATION NO LIQUOR			Dec
18	2700 S. Woodlands Village Blvd., Flagstaff, AZ 86001	COCONINO	9030042	9030045	May
19	3115 S. McClintock Rd., Tempe, AZ 85282	MARICOPA	9070040		Dec
FC 20	4335 W. Glendale Ave., Glendale, AZ 85301	MARICOPA	9070050		Dec
21	1162 E. Florence Blvd., Casa Grande, AZ 85222	PINAL	9110005		Aug
22	10715 E. Apache Trail, Apache Junction, AZ 85220	MARICOPA	9070038		Dec
23	2806 W. Cactus Rd., Phoenix, AZ 85029	MARICOPA	9070001		Dec
24	1010 E. Broadway, Needles, CA 92363		237400		Oct
FC 25	450 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070045		Dec
FC 26	1005 N. Arizona Ave., Chandler, AZ 85225	MARICOPA	9070046		Dec
27	Topawa Rd., P.O. Box 9065, Sells, AZ 85634	RESERVATION NO LIQUOR			
28	160 Coffee Pot Dr., Sedona, AZ 86336	YAVAPAI	9130003		Aug
29	1858 W. Baseline Rd., Mesa, AZ 85202	MARICOPA	9070047		Dec
30	3360 Andy Devine, Kingman, AZ 86401	MOHAVE	9080004		July
31	Hwy 57 & Indian Service Road 9, Crownpoint, NM 87313	RESERVATION NO LIQUOR			

BASHAS' LIQUOR LICENSES

7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
32	4727 E. Bell Rd., Suite 39, Phoenix, AZ 85032	MARICOPA	9070048		Dec
33	P.O. Box 1060 Chinle, AZ 86503	RESERVATION NO LIQUOR			
34	18785 S. I-19 Frontage Rd., Green Valley, AZ 85614	PIMA	9100130		Oct
35	P.O. Box 3120, Window Rock, AZ 86515-3120	RESERVATION NO LIQUOR			
36	P.O. Box 65, Tuba City, AZ 86045	RESERVATION NO LIQUOR			
37	1051 E. Highway 279, Cottonwood, AZ 86326	YAVAPAI	9130004		Aug
38	687 S. Lake Powell Blvd., Page, AZ 86040	COCONINO	9030004		May
39	1500 N. Park Dr., Winslow, AZ 86047	NAVAJO	9090021	9090004	May
40	2323 W. Hwy. 70, Thatcher, AZ 85552	GRAHAM	9050015		June
41 Closed	7830 N. 12th St., Phoenix, AZ 85020	MARICOPA	9070003	90700026/19/2001	Dec
42	P.O. Box 1810, Kayenta, AZ 86033	RESERVATION NO LIQUOR			
43	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9070691		Dec
44	1631 McCullough Blvd., Lake Havasu City, AZ 86403	MOHAVE	9080044		July
45	3530 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070051		Dec
46 Closed	701 N. Gilbert Rd., Gilbert, AZ 85234	MARICOPA	9070050	7/28/01	Dec
47	16605 E. Palisades, Fountain Hills, AZ 85268	MARICOPA	9070759		Dec
48	1761 E. Warner Rd., Tempe, AZ 85284	MARICOPA	9070052		Dec
49	650 W. Finne Flat Rd. Camp Verde, AZ 86322	YAVAPAI	9130005		Aug
50	6720 E. Broadway, Mesa, AZ 85206	MARICOPA	9070028		Dec
51	1122 N. Higley, Mesa, AZ 85205	MARICOPA	9070054		Dec
53	650 N. Main, Taylor, AZ 85939	NAVAJO	9090022	9090005	May
54	Nec Highway 260 & 87	GILA	9040033		June
55	275 N. Tegner St, Wickenburg, AZ 85358	MARICOPA	9070666		Dec
56 Closed	4441 S. White Mtn. Rd., Showlow, AZ 85905	NAVAJO	9090022 - Inactive	9090037 - 5/21/01	May
57	1761 E. Hwy. 69, Prescott, AZ 86301	YAVAPAI	9130424	9130049	Aug
FC 58	2250 S. Hwy. 95 #476, Bullhead, AZ 86430	MOHAVE	9080003		July
FC 59	1648 S. 16th St., Phoenix, AZ 85034	MARICOPA	9070500		Dec
FC 60	450 N. Grand Court Plaza, Nogales, AZ 85621	SANTA CRUZ	9120003		June
AJ'S 62	13226 N. 7th St., Phoenix, AZ 85022	MARICOPA	6070478		Jan
AJ'S 63	7141 E. Lincoln Dr., Scottsdale, AZ 85253	MARICOPA	9070258		Dec
AJ'S 64	5017 N. Central Ave., Phoenix, AZ 85012	MARICOPA	9070253		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
65	1020 Arizona Ave., Parker, AZ 85344	LA PAZ	9150005		July
66	36889 Tom Darlington, Carefree, AZ 85377	MARICOPA	9070271		Dec
67	1000 N. Humphreys Blvd. #112, Flagstaff, AZ 86001	COCONINO	9030017		May
68	350 W. Apache Trail, Apache Junction, AZ 85220	PINAL	9110023		Aug
69	3923 N. Flowing Wells, Tucson, AZ 85705	PIMA	9100257		Oct
AJ'S 70	10105 E. Via Linda #10, Scottsdale, AZ 85258	MARICOPA	9070261		Dec
71	6900 E. Sunrise, Tucson, AZ 85750	PIMA	9100028		Oct
72	1919 E. Ray Rd., Chandler, AZ 85225	MARICOPA	9070043		Dec
73	2864 N. Power Rd., Mesa, AZ 85215	MARICOPA	9070042		Dec
AJ'S 75	23251 N. Pima Rd., Scottsdale, AZ 85255-4315	MARICOPA	9070354		Dec
76	2840 S. Alma School Rd., Chandler, AZ 85248	MARICOPA	9070272		Dec
FC 77	2950 S 6th Ave. Tucson 85713	PIMA	9100107	9100107	Oct
78	P.O. Box 1660, White River, AZ 85941	RESERVATION NO LIQUOR			2003 FEB 18
79	8360 N. Thornydale Rd., Tucson, AZ 85741	PIMA	9100030		Oct
81	6760 W. Deer Valley Rd., Glendale, AZ 85310	MARICOPA	9070041		Dec
82	5311 S Superstition Mtn. Dr. Gold Canyon, AZ 85219	PINAL	9110056		Aug
FC 83	325 E. Main St., Avondale, AZ 85323	MARICOPA	9070266		Dec
84	4321 E. Baseline Rd, Gilbert, AZ 85234	MARICOPA	9070254		Dec
85	1920 W. Chandler Blvd., Chandler, AZ 85224	MARICOPA	9070478		Dec
86	100 S. Houghton Rd., Tucson, AZ 85748	PIMA	9100081		Oct
AJ'S 87	7131 W Ray Rd. Chandler, AZ 85226	MARICOPA	9070387		Dec
EDDIE'S 88	1763 E. White Mountain Blvd., Pinetop, AZ 85935	NAVAJO	9090037	9090050	May
FC 89	12321 W. Grand Ave., El Mirage, AZ 85335	MARICOPA	9070259		Dec
90	3901 E. Thunderbird Rd, Phx, AZ 85032	MARICOPA	9070473		Dec
91	105 Main Street, Bagdad, AZ 86321	YAVAPAI	9130018		Aug
92	172 Plaza, Morenci AZ 85540	GREENLEE	9060012		June
FC 93	1450 N. Dysart Rd., Avondale, AZ 85323	MARICOPA	9070700		Dec
FC 94	3442 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070644		Dec
FC 95	1940 W. Indian School Rd., Phoenix, AZ 85015	MARICOPA	9070415		Dec
FC 96	1338-40 E. Apache Boulevard, Tempe, AZ 85281	MARICOPA	9070112		Dec
97	20745 N. Scottsdale Rd., Scottsdale, AZ 85255	MARICOPA	9070128		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
99	10111 E. Bell Rd, Scottsdale, AZ 85260	MARICOPA	9070003		Dec
100	3275 N. Swan Rd., Tucson, AZ 85712	PIMA	9100131		
FC 101	1251 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070067		Dec
FC 103	4239 W. McDowell Rd. #10, Phoenix, AZ 85009	MARICOPA	9070651		Dec
FC 104	3202 E. Greenway Rd., Phoenix, AZ 85032	MARICOPA	9070737		Dec
FC 105	3514 W. Glendale Ave., Phoenix, AZ 85051	MARICOPA	9070255		Dec
FC 106	4344 W. Indian School Rd., Phoenix, AZ 85031	MARICOPA	9070731		Dec
FC 107	7227 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070269		Dec
FC 108	1799 Kiowa Ave., Lake Havasu City, AZ 85204	MOHAVE	9080019		July
FC 111	800 E. Fry Blvd., Sierra Vista, AZ 85635	COCHISE	9020058		June
FC 111	85 S. Highway 92, Sierra Vista, AZ 85635	COCHISE	9020051		June
FC 112	1300 San Antonio Ave., Douglas, AZ 85607	COCHISE	9020032		June
113	731 E. Union Hills Drive, Phoenix, AZ 85024	MARICOPA	9070037		Dec
FC 114	1240 W. 8th St., Yuma, AZ 85364	YUMA COUNTY	9140038		July
FC 115	1477 E. Apache Trail, Apache Junction, AZ 85222	PINAL	9110052		Feb
116	3200 Maricopa Ave., Lake Havasu, AZ 86406	MOHAVE	9080001		July
118	1503 E. Thompson Peak Parkway, Scottsdale 85260	MARICOPA	6070294		Dec
120	7586 W. Thunderbird Rd., Peoria, AZ 85381	MARICOPA	9070030		Dec
121	150 N. Main Street, Eagar, AZ 85925	APACHE	9010024		May
FC 124	2600 W. 16th St., Yuma, AZ 85364	YUMA COUNTY	9140046	9140004	July
125	13005 n. Oracle Rd., Tucson, AZ 85737	PIMA	9100153		Oct
FC 126	115 E. Dunlap, Phoenix, AZ 85020	MARICOPA	9070117		Dec
FC 127	23413 S. Main Street, San Luis, AZ 85349	YUMA	9140042		July
128	13940 W. Meeker Blvd., Sun City West, AZ 85378	MARICOPA	9070060		Dec
129	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9071013		Dec
FC 131	6018 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070618		Dec
FC 132	2709 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070459		Dec
FC 133	3030 E. 22nd., St., Tucson, AZ 85713	PIMA	9100225		Oct
FC 134	1775 W. Ajo Way, Tucson, AZ 85713	PIMA	9100215		Oct
FC 135	5114 W. McDowell, Phoenix, AZ 85035	MARICOPA	9070119		Dec

BASHAS' LIQUOR LICENSES
7/11/02

TOR#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
FC 136	1225 W. St. Mary's Rd., Tucson, AZ 85745	PIMA	9100233		Oct.
FC 137	635 W. Valencia, Tucson, AZ 85706	PIMA	9100144		Oct.
FC 138	2036 E. Thomas Rd., Phoenix, AZ 85016	MARICOPA	9070364		Dec
FC 139	1928 W. Buckeye Rd., Phoenix, AZ	MARICOPA	9070395		Dec
FC 140	6544 W. Thomas Rd., Phoenix, AZ 85031	MARICOPA	9070372		Dec
FC 141	8040 N. 19th Ave., Phoenix, AZ 85017	MARICOPA	9070374		Dec
FC 142	6020 N. 59th Ave., Glendale, AZ 85301	MARICOPA	9070404		Dec
FC 143	4430 E. McDowell Rd., Phoenix, 85008	MARICOPA	9070616		Dec
FC 145	450 S. Country Club Dr., Mesa, 85210	MARICOPA	9070401		Dec
FC 146	4338 W. Thomas Rd., Phoenix, 85031	MARICOPA	9070109		Dec
FC 147	1830 E. Irvington, Tucson 85714	PIMA	9100116		Oct
FC 148	3205 E. McDowell Rd. #28, Phoenix 85008	MARICOPA	9070632		Dec
FC 149	6025 N. 27th Avenue #13, Phoenix 85017	MARICOPA	9070631		Dec
FC 150	8210 W. Indian School Rd, Phoenix 85033	MARICOPA	9070646		Dec
FC 151	719 E. Ft. Lowell, Tucson 85719	PIMA	9100025		Oct
FC 152	4727 E. Southern, Phoenix 85040	MARICOPA	9070643		Dec
FC 153	5011 N. 35th Avenue, Phoenix 85017	MARICOPA	9070125		Dec

DLLC

2003 FEB 18 A 10:47

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



FP CURRENT
12/02
400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595
AK
P1071

QUESTIONNAIRE

SOCIAL SECURITY AND BIRTHDATE INFORMATION IS CONFIDENTIAL BY LAW AND CANNOT BE DISSEMINATED TO THE PUBLIC

Read Carefully, this instrument is a sworn document. Type or print with black ink

An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

There is a \$24.00 processing fee for each fingerprint card submitted.

A service fee of \$25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # 09071013

(If the location is currently licensed)

1. Check appropriate box → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☐ Officer ☐ Agent ☒ Manager (Only)
☐ Other (Complete Questions 1-20 & 24) Complete All Questions except # 14, 14a & 25
Licensee or Agent must complete # 25 for a Manager Licensee or Agent must complete # 25

2. Name: Henry Donna Rene Date of Birth: [REDACTED]
Last First Middle (This Will Not Become a Part of Public Records)

3. Social Security Number: [REDACTED] Drivers License #: [REDACTED] State: AZ
(This Will Not Become a Part of Public Records)

4. Place of Birth: Phoenix AZ USA Height: 5'3" Weight: 130 Eyes: gr Hair: BL
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: [REDACTED]

6. Name of Current or Most Recent Spouse: Henry Kevin Wayne Date of Birth: [REDACTED]
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? AZ If Arizona, date of residency: 9-20-61

8. Telephone number to contact you during business hours for any questions regarding this document [REDACTED]

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: BASHAS 129 Premises Phone: (480) 940-6731

11. Licensed Premises Address: 11755 N. 136th St Scottsdale MARICOPA 85259
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
7-91	CURRENT	grocery store	BASHAS INC. 22402 S. Bashe Rd Chandler, AZ 85248

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION <

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	RESIDENCE Street Address	City	State	Zip
8-93	CURRENT	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the licensed premises? If you answered YES, how many hrs/day? , answer #14a below. If NO, skip to #15. ☐ YES ☐ NO
14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐ YES ☐ NO
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you EVER been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO

16. Have you EVER been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? For traffic violations, include only those that were alcohol and/or drug related. ☐ YES ☒ NO

17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐ YES ☒ NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined in this or any other state? ☒ YES ☐ NO
See attached

19. Has anyone EVER filed suit or obtained a judgment against you in a civil action, the subject of which is misrepresentation of a business, professional or liquor license? ☐ YES ☒ NO

20. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other business, professional or liquor license in this or any other state? ☒ YES ☐ NO
Has been manager at various Bashas locations attached

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement giving complete details. Please be sure to include dates, agencies involved and dispositions.

Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☒ YES ☐ NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.

22. Do you make payments to the licensee? ☐ YES ☒ NO If "yes", how much? \$ per month. Total debt to licensee \$

23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☒ NO If "yes", attach a copy of such agreement.

24. I, DONNA R. HENRY, hereby declare that I am the APPLICANT filing this questionnaire.
(Print full name of Applicant)

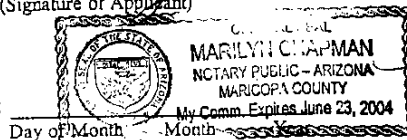
I have read this questionnaire and the contents and all statements are true, correct and complete.

X Donna R. Henry
(Signature of Applicant)

State of ARIZONA County of Maricopa
The foregoing instrument was acknowledged before me this

2nd day of February, 2003
Day of Month Month Year

My commission expires on:



Day of Month Month Year

Marilyn Chapman
(Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION

25. I, (Print Licensee/Agent's Name): BASHA J MICHAEL
Last Middle First

Hereby authorize the applicant to act as manager for the named liquor license.

County of Maricopa
The foregoing instrument was acknowledged before me this

3rd day of February, 2003
Day of Month Month Year

X [Signature]
(Signature of LICENSEE/AGENT)

My commission expires on:



Day of Month Month Year

Marilyn Chapman
(Signature of NOTARY PUBLIC)

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141



400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

DLCC CERTIFICATION OF COMPLETED ALCOHOL TRAINING PROGRAM(S)

2003 FEB 18 A 10:19
OBTAIN ORIGINALS OF THIS FORM FROM DLCC-DO NOT PHOTOCOPY, DOCUMENT IS COMPUTER SCANNED. TYPE OR PRINT WITH BLACK INK.

ALCOHOL TRAINING PROGRAM INDIVIDUAL INFORMATION

Donna Henry

Individual Name (Print)

Donna Henry

Individual Signature

02/08/02

Date Training Completed

TYPE OF TRAINING COMPLETED TRAINER MUST CHECK YES OR NO FOR EACH TYPE

☒ YES ☐ NO BASIC

☒ YES ☐ NO ON SALE

☒ YES ☐ NO MANAGEMENT

☒ YES ☐ NO OFF SALE

☐ YES ☒ NO BOTH

☐ YES ☒ NO OTHER

IF TRAINEE IS EMPLOYED BY A LICENSEE:

BASHAS' INC

BASHAS 129

09071013

NAME OF THE LICENSEE

BUSINESS NAME

LIQUOR LICENSE NUMBER

ALCOHOL TRAINING PROGRAM PROVIDER INFORMATION

ARIZONA ALCOHOL AWARENESS ASSOCIATION

Company or Individual Name

4302 NORTH 21ST STREET STE. #B

Address

PHOENIX

ARIZONA

85016

602-410-2111

City

State

Zip

Phone

I Certify the above named individual has successfully completed the specified program(s).

JERRY CRITES

Trainer Name (Print)

Jerry Crites

Trainer Signature

02/08/02

Date

Trainer give original of completed form to trainee, photocopy and maintain completed document for your records.

Mandatory Liquor Law Training for all new applications submitted after Nov. 1, 1997. A.R.S. Section 4-112(G)(2). Completion of the Liquor License Training Courses is required at the issuance of a license.

The person(s) required to attend both the Basic Liquor Law and Management Training, (either on-sale or off-sale), will include all of the following : owner(s), licensee/agent or manager(s) **WHO ARE ACTIVELY INVOLVED IN THE DAY TO DAY OPERATION OF THE BUSINESS.** Proof of attendance within the last five years for the required courses must be submitted to the Department before the license application is considered complete.

Before acceptance of a Manager's Questionnaire and/or Agent Change for an existing license, proof of attendance for the Basic Liquor Law and Management Training (either on-sale or off-sale) will be required.



2003 FEB 18 A 10:47

Arizona Department of Liquor License and Control
800 W. Washington - 5th Floor
Phoenix, Arizona 85007

Dear License Technician:

This communication is in answer to Section 5, #11 of Application Form 120 and Questionnaire Form 101 #14 for each Officer of Bashas' Inc. Listed below are violations Bashas' has received for the last two years at various locations. Violations prior to 1998 are on file at Bashas' Distribution Center, 200 S. 56th Street, Chandler, AZ 85226.

DATE	LICENSE #	STORE LOCATION	VIOLATION
December 17, 1999	09071013	Bashas' 43 - Sun Lakes	Sale to Minor
December 21, 1999	09070759	Bashas' 47 - Fountain Hills	Sale to Minor
August 2, 2000	09070254	Bashas' 84 - Gilbert	Sale to Minor

For Bashas=

Michael J. Basha
Vice President/Agent

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
1	6085 W. Chandler Blvd. Chandler, AZ 85226	MARICOPA	9070002		Dec
2	339 E. Brown Road, Mesa, AZ 85201	MARICOPA	9070044		Dec
3	3320 N. 7th Ave., Phoenix, AZ 85013	MARICOPA	9070053		Dec
FC 4	300 N. Florence, Case Grande, AZ 85222	PINAL	9110051	9110004	Aug
5	3131 E. Indian School Rd., Phoenix, AZ 85016	MARICOPA	9070029		Dec
6 Closed	5120 W. Peoria Ave., Glendale, AZ 85301	MARICOPA	Trans. To 120	9070030 - 6/19/01	Dec
7	8035 E. Indian School Rd., Scottsdale, AZ 85251	MARICOPA	9070033		Dec
8	San Carlos Ave., San Carlos, AZ 85550	RESERVATION NO LIQUOR			
9	1517 E. Bethany Home Rd., Phoenix, AZ 85014	MARICOPA	9070031		Dec
FC 10	1342 E. Main St., Mesa, AZ 85201	MARICOPA	9070032		Dec
11	4855 E. Warner Rd., Phoenix, AZ 85044	MARICOPA	9070039		Dec
FC 12	2124 E. McDowell Rd., Phoenix, AZ 85006	MARICOPA	9070034		Dec
13	7405 E. McDowell Rd., Scottsdale, AZ 85257	MARICOPA	9070035		Dec
14	1954 E. McKellips Rd., Mesa, AZ 85203	MARICOPA	9070036		Dec
15	10631 N. 32nd St., Phoenix, AZ 85028	MARICOPA	9070049		Dec
16	8423 E. McDonald Dr., Scottsdale, AZ 85250	MARICOPA	9070027		Dec
17	P.O. Box 840, Pinon, AZ 86510	RESERVATION NO LIQUOR			Dec
18	2700 S. Woodlands Village Blvd., Flagstaff, AZ 86001	COCONINO	9030042	9030045	May
19	3115 S. McClintock Rd., Tempe, AZ 85282	MARICOPA	9070040		Dec
FC 20	4335 W. Glendale Ave., Glendale, AZ 85301	MARICOPA	9070050		Dec
21	1162 E. Florence Blvd., Casa Grande, AZ 85222	PINAL	9110005		Aug
22	10715 E. Apache Trail, Apache Junction, AZ 85220	MARICOPA	9070038		Dec
23	2806 W. Cactus Rd., Phoenix, AZ 85029	MARICOPA	9070001		Dec
24	1010 E. Broadway, Needles, CA 92363		237400		Oct
FC 25	450 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070045		Dec
FC 26	1005 N. Arizona Ave., Chandler, AZ 85225	MARICOPA	9070046		Dec
27	Topawa Rd., P.O. Box 9065, Sells, AZ 85634	RESERVATION NO LIQUOR			
28	160 Coffee Pot Dr., Sedona, AZ 86336	YAVAPAI	9130003		Aug
29	1858 W. Baseline Rd., Mesa, AZ 85202	MARICOPA	9070047		Dec
30	3360 Andy Devine, Kingman, AZ 86401	MOHAVE	9080004		July
31	Hwy 57 & Indian Service Road 9, Crownpoint, NM 87313	RESERVATION NO LIQUOR			

BASHAS' LIQUOR LICENSES
7/11/02

STORE #	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	RENEW DATE
32	4727 E. Bell Rd., Suite 39, Phoenix, AZ 85032	MARICOPA	9070048		Dec
33	P.O. Box 1060 Chinle, AZ 86503	RESERVATION NO LIQUOR			
34	18785 S. I-19 Frontage Rd., Green Valley, AZ 85614	PIMA	9100130		Oct
35	P.O. Box 3120, Window Rock, AZ 86515-3120	RESERVATION NO LIQUOR			
36	P.O. Box 65, Tuba City, AZ 86045	RESERVATION NO LIQUOR			
37	1051 E. Highway 279, Cottonwood, AZ 86326	YAVAPAI	9130004		Aug
38	687 S. Lake Powell Blvd., Page, AZ 86040	COCONINO	9030004		May
39	1500 N. Park Dr., Winslow, AZ 86047	NAVAJO	9090021	9090004	May
40	2323 W. Hwy. 70, Thatcher, AZ 85552	GRAHAM	9050015		June
41 Closed	7830 N. 12th St., Phoenix, AZ 85020	MARICOPA	9070003	90700026/19/2001	Dec
42	P.O. Box 1810, Kayenta, AZ 86033	RESERVATION NO LIQUOR			
43	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9070691		Dec
44	1631 McCullough Blvd., Lake Havasu City, AZ 86403	MOHAVE	9080044		July
45	3530 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070051		Dec
46 Closed	701 N. Gilbert Rd., Gilbert, AZ 85234	MARICOPA	9070050	7/28/01	Dec
47	16605 E. Palisades, Fountain Hills, AZ 85268	MARICOPA	9070759		Dec
48	1761 E. Warner Rd., Tempe, AZ 85284	MARICOPA	9070052		Dec
49	650 W. Finne Flat Rd. Camp Verde, AZ 86322	YAVAPAI	9130005		Aug
50	6720 E. Broadway, Mesa, AZ 85206	MARICOPA	9070028		Dec
51	1122 N. Higley, Mesa, AZ 85205	MARICOPA	9070054		Dec
53	650 N. Main, Taylor, AZ 85939	NAVAJO	9090022	9090005	May
54	Nec Highway 260 & 87	GILA	9040033		June
55	275 N. Tegner St, Wickenburg, AZ 85358	MARICOPA	9070666		Dec
56 Closed	4441 S. White Mtn. Rd., Showlow, AZ 85905	NAVAJO	9090022 - inactive	9090037 - 5/21/01	May
57	1761 E. Hwy. 69, Prescott, AZ 86301	YAVAPAI	9130424	9130049	Aug
FC 58	2250 S. Hwy. 95 #476, Bullhead, AZ 86430	MOHAVE	9080003		July
FC 59	1648 S. 16th St., Phoenix, AZ 85034	MARICOPA	9070500		Dec
FC 60	450 N. Grand Court Plaza, Nogales, AZ 85621	SANTA CRUZ	9120003		June
AJ'S 62	13226 N. 7th St., Phoenix, AZ 85022	MARICOPA	6070478		Jan
AJ'S 63	7141 E. Lincoln Dr., Scottsdale, AZ 85253	MARICOPA	9070258		Dec
AJ'S 64	5017 N. Central Ave., Phoenix, AZ 85012	MARICOPA	9070253		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
65	1020 Arizona Ave., Parker, AZ 85344	LA PAZ	9150005		July
66	36889 Tom Darlington, Carefree, AZ 85377	MARICOPA	9070271		Dec
67	1000 N. Humphreys Blvd. #112, Flagstaff, AZ 86001	COCONINO	9030017		May
68	350 W. Apache Trail, Apache Junction, AZ 85220	PINAL	9110023		Aug
69	3923 N. Flowing Wells, Tucson, AZ 85705	PIMA	9100257		Oct
AJ'S 70	10105 E. Via Linda #10, Scottsdale, AZ 85258	MARICOPA	9070261		Dec
71	6900 E. Sunrise, Tucson, AZ 85750	PIMA	9100028		Oct
72	1919 E. Ray Rd., Chandler, AZ 85225	MARICOPA	9070043		Dec
73	2864 N. Power Rd., Mesa, AZ 85215	MARICOPA	9070042		Dec
AJ'S 75	23251 N. Pima Rd., Scottsdale, AZ 85255-4315	MARICOPA	9070354		Dec
76	2840 S. Alma School Rd., Chandler, AZ 85248	MARICOPA	9070272		Dec
FC 77	2950 S 6th Ave. Tucson 85713	PIMA	9100107	9100107	Oct
78	P.O. Box 1660, White River, AZ 85941	RESERVATION NO LIQUOR			
79	8360 N. Thornydale Rd., Tucson, AZ 85741	PIMA	9100030		Oct
81	6760 W. Deer Valley Rd., Glendale, AZ 85310	MARICOPA	9070041		Dec
82	5311 S Superstition Mtn. Dr. Gold Canyon, AZ 85219	PINAL	9110056		Aug
FC 83	325 E. Main St., Avondale, AZ 85323	MARICOPA	9070266		Dec
84	4321 E. Baseline Rd, Gilbert, AZ 85234	MARICOPA	9070254		Dec
85	1920 W. Chandler Blvd., Chandler, AZ 85224	MARICOPA	9070478		Dec
86	100 S. Houghton Rd., Tucson, AZ 85748	PIMA	9100081		Oct
AJ'S 87	7131 W Ray Rd. Chandler, AZ 85226	MARICOPA	9070387		Dec
EDDIE'S 88	1763 E. White Mountain Blvd., Pinetop, AZ 85935	NAVAJO	9090037	9090050	May
FC 89	12321 W. Grand Ave., El Mirage, AZ 85335	MARICOPA	9070259		Dec
90	3901 E. Thunderbird Rd, Phx, AZ 85032	MARICOPA	9070473		Dec
91	105 Main Street, Bagdad, AZ 86321	YAVAPAI	9130018		Aug
92	172 Plaza, Morenci AZ 85540	GREENLEE	9060012		June
FC 93	1450 N. Dysart Rd., Avondale, AZ 85323	MARICOPA	9070700		Dec
FC 94	3442 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070644		Dec
FC 95	1940 W. Indian School Rd., Phoenix, AZ 85015	MARICOPA	9070415		Dec
FC 96	1338-40 E. Apache Boulevard, Tempe, AZ 85281	MARICOPA	9070112		Dec
97	20745 N. Scottsdale Rd., Scottsdale, AZ 85255	MARICOPA	9070128		Dec

BASHAS' LIQUOR LICENSES
7/11/02

STORE#	ADDRESS	COUNTY	LICENSE# ACTIVE	LICENSE# INACTIVE	RENEW DATE
99	10111 E. Bell Rd, Scottsdale, AZ 85260	MARICOPA	9070003		Dec
100	3275 N. Swan Rd., Tucson, AZ 85712	PIMA	9100131		
FC 101	1251 E. Southern Ave., Mesa, AZ 85204	MARICOPA	9070067		Dec
FC 103	4239 W. McDowell Rd. #10, Phoenix, AZ 85009	MARICOPA	9070651		Dec
FC 104	3202 E. Greenway Rd., Phoenix, AZ 85032	MARICOPA	9070737		Dec
FC 105	3514 W. Glendale Ave., Phoenix, AZ 85051	MARICOPA	9070255		Dec
FC 106	4344 W. Indian School Rd., Phoenix, AZ 85031	MARICOPA	9070731		Dec
FC 107	7227 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070269		Dec
FC 108	1799 Kiowa Ave., Lake Havasu City, AZ 85204	MOHAVE	9080019		July
FC 111	800 E. Fry Blvd., Sierra Vista, AZ 85635	COCHISE	9020058		June
FC 111	85 S. Highway 92, Sierra Vista, AZ 85635	COCHISE	9020051		June
FC 112	1300 San Antonio Ave., Douglas, AZ 85607	COCHISE	9020032		June
113	731 E. Union Hills Drive, Phoenix, AZ 85024	MARICOPA	9070037		Dec
FC 114	1240 W. 8th St., Yuma, AZ 85364	YUMA COUNTY	9140038		July
FC 115	1477 E. Apache Trail, Apache Junction, AZ 85222	PINAL	9110052		Aug
116	3200 Maricopa Ave., Lake Havasu, AZ 86406	MOHAVE	9080001		July
118	1503 E. Thompson Peak Parkway, Scottsdale 85260	MARICOPA	6070294		Dec
120	7586 W. Thunderbird Rd., Peoria, AZ 85381	MARICOPA	9070030		Dec
121	150 N. Main Street, Eagar, AZ 85925	APACHE	9010024		May
FC 124	2600 W. 16th St., Yuma, AZ 85364	YUMA COUNTY	9140046	9140004	July
125	13005 n. Oracle Rd., Tucson, AZ 85737	PIMA	9100153		Oct
FC 126	115 E. Dunlap, Phoenix, AZ 85020	MARICOPA	9070117		Dec
FC 127	23413 S. Main Street, San Luis, AZ 85349	YUMA	9140042		July
128	13940 W. Meeker Blvd., Sun City West, AZ 85378	MARICOPA	9070060		Dec
129	10325 E. Riggs Rd., Sun Lakes, AZ 85248	MARICOPA	9071013		Dec
FC 131	6018 S. Central Ave., Phoenix, AZ 85042	MARICOPA	9070618		Dec
FC 132	2709 W. Van Buren St., Phoenix, AZ 85009	MARICOPA	9070459		Dec
FC 133	3030 E. 22nd., St., Tucson, AZ 85713	PIMA	9100225		Oct.
FC 134	1775 W. Ajo Way, Tucson, AZ 85713	PIMA	9100215		Oct.
FC 135	5114 W. McDowell, Phoenix, AZ 85035	MARICOPA	9070119		Dec

BASHAS' LIQUOR LICENSES
7/11/02

TOR#	ADDRESS	COUNTY	LICENSE # ACTIVE	LICENSE # INACTIVE	REVIEW DATE
FC 136	1225 W. St. Mary's Rd., Tucson, AZ 85745	PIMA	9100233		Oct.
FC 137	635 W. Valencia, Tucson, AZ 85706	PIMA	9100144		Oct.
FC 138	2036 E. Thomas Rd., Phoenix, AZ 85016	MARICOPA	9070364		Dec
FC 139	1928 W. Buckeye Rd., Phoenix, AZ	MARICOPA	9070395		Dec
FC 140	6544 W. Thomas Rd., Phoenix, AZ 85031	MARICOPA	9070372		Dec
FC 141	8040 N. 19th Ave., Phoenix, AZ 85017	MARICOPA	9070374		Dec
FC 142	6020 N. 59th Ave., Glendale, AZ 85301	MARICOPA	9070404		Dec
FC 143	4430 E. McDowell Rd., Phoenix, 85008	MARICOPA	9070616		Dec
FC 145	450 S. Country Club Dr., Mesa, 85210	MARICOPA	9070401		Dec
FC 146	4338 W. Thomas Rd., Phoenix, 85031	MARICOPA	9070109		Dec
FC 147	1830 E. Irvington, Tucson 85714	PIMA	9100116		Oct
FC 148	3205 E. McDowell Rd. #28, Phoenix 85008	MARICOPA	9070632		Dec
FC 149	6025 N. 27th Avenue #13, Phoenix 85017	MARICOPA	9070631		Dec
FC 150	8210 W. Indian School Rd, Phoenix 85033	MARICOPA	9070646		Dec
FC 151	719 E. Ft. Lowell, Tucson 85719	PIMA	9100025		Oct
FC 152	4727 E. Southern, Phoenix 85040	MARICOPA	9070643		Dec
FC 153	5011 N. 35th Avenue, Phoenix 85017	MARICOPA	9070125		Dec

DLCC
2003 FEB 18 A 10:47

CITY COUNCIL REPORT



MEETING DATE: April 15, 2003

ITEM NO. 3 GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT

Pure Fitness Use Permit

REQUEST

Request to approve a conditional use permit for a health studio in a 25,000 +/- sq ft tenant space of a building located at 7330 E Shea Blvd, Suites 101 & 102 with Central Business District (C-2) zoning.

1-UP-2003

Key Items for Consideration:

- Health studio proposed within an existing building
- Adequate parking provided
- Traffic impacts not adverse
- Planning Commission recommends approval, 7-0.

OWNER

Shea East L L C
480-945-2681

APPLICANT CONTACT

Karen Betancourt
Mittlesteadt & Cooper Associates Ltd
602-389-4245

LOCATION

7330 E Shea Bl 101,102

BACKGROUND

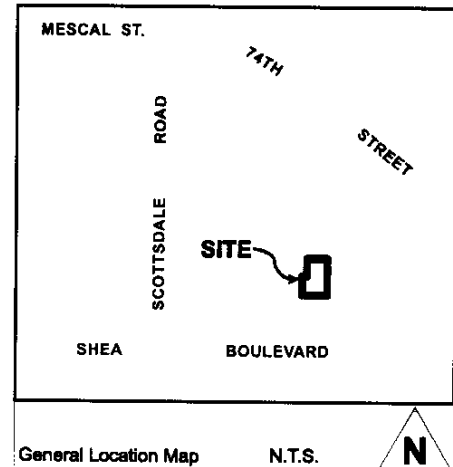
The Central Business District (C-2) zoning was established on this site in 1992. The property is improved with a commercial strip center that is nearly built out and 2 individual pad sites are available for commercial buildings. The existing center is occupied with restaurants, a theater, furniture stores, and other retail uses.

The surrounding area consists of commercial zoning and development to the west, south, and east. Single-family residential development is located northeast of the site, on the other side of this commercial center's existing buildings and across 74th Street. This tenant space, where the health studio proposes to locate, is situated within the interior of the commercial center and is not visible from the nearby residential area.

APPLICANT'S PROPOSAL

Goal/Purpose of Request.

The applicant proposes to operate a health studio in an existing 25,000-square-foot tenant space. The only proposed improvements to the site include door, window, and sign changes to suit the needs of the health club.



The features of the health studio include aerobics, cardiovascular equipment, biking, and free weight areas, lockers/changing rooms, and restrooms.

Community Impact.

Pure Fitness is relocating from its existing business that currently operates at 10320 North Scottsdale Road (on the south side of Cochise Road, west of Scottsdale Road), just southwest of this proposed location.

Other health studios are also located in this area of the community. An existing health studio, called Edufit already provides fitness training within the commercial center in which Pure Fitness desires to locate.

IMPACT ANALYSIS

Traffic.

The applicant has provided data to the City's Transportation Department staff that prepared a traffic generation analysis. This analysis demonstrates that the proposed use will not create adverse traffic impacts on local streets. No new access drives, streets, or traffic control devices are required.

Use Permit Criteria.

Conditional use permits, which may be revocable, conditional, or valid for a specified time period, may be granted only when expressly permitted after the Planning Commission has made a recommendation and the City Council has found as follows:

- A. That the granting of such conditional use permit will not be materially detrimental to the public health, safety or welfare. In reaching this conclusion, the Planning Commission and the City Council's consideration shall include, but not be limited to, the following factors:
 1. Damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
 - ***This use does not generate smoke, odor, dust, vibration or illumination.***
 - ***There are no external speakers or window openings. Noise from operations will be contained within the building.***
 2. Impact on surrounding areas resulting from an unusual volume or character of traffic.
 - ***The traffic generation analysis demonstrates that the use will not generate adverse traffic impacts.***
 3. There are no other factors associated with this project that will be materially detrimental to the public.
 - ***The project narrative and file contents do not lead to any other factors that could be materially detrimental to the public.***
- B. The characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas.
 - ***The use occurs entirely within an enclosed building and the operational characteristics will be compatible with the surrounding uses.***
- C. The additional conditions specified in Section 1.403, as applicable, have been satisfied.

No additional conditions are specified in the Zoning Code.

Community involvement.

The applicant has contacted surrounding property owners and tenants to advise of this proposal. Staff has not received any correspondence in support of or against this proposal.

RECOMMENDATION

Staff recommends approval, subject to the attached stipulations.

Planning Commission:

The Planning Commission heard this case on February 26, 2003. The Planning Commission asked a couple of questions:

- What are the existing Pure Fitness operations on this property? The applicant explained is an office for the fitness facility.
- Is there adequate parking? Yes, the parking as exists on the site is adequate.

The Planning Commission recommends approval, 7-0.

**RESPONSIBLE
DEPT(S)**


Planning and Development Services Department
Current Planning Services

STAFF CONTACT(S)

Kira Wauwie AICP
Project Coordination Manager
480-312-7061
E-mail: kwauwie@ScottsdaleAZ.gov

Randy Grant
Chief Planning Officer
480312-7995
E-mail: rgrant@ScottsdaleAZ.gov

APPROVED BY

 *Kroy Ekblaw*
Kroy Ekblaw
General Manager, Planning & Development Services Department
4/2/03
Date

 *Ed Gawf*
Ed Gawf
Deputy City Manager
4/2/03
Date

ATTACHMENTS

1. Applicant's Narrative
2. Context Aerial
- 2A. Aerial Close-Up
3. Land Use Map
4. Zoning Map
5. Stipulations
6. Traffic Impact Summary
7. Citizen Involvement
8. February 26, 2003 Draft Planning Commission Minutes
9. Site Plan

☐ Rezoning ☐ Other
☒ Use Permit FOR TENANT IMP.
☐ Development Review
☐ Master Sign Programs
☐ Variance

Case # 538 -PA- 02
 Project Name PURE FITNESS
 Location 7330 E SHEA BOULEVARD
 Applicant KAREN BETANCOURT

SITE DETAILS

Proposed/Existing Zoning: C-2
 Use: COMERCIAL
 Parcel Size: N/A
☐ Gross Floor Area ☐ Total Units: N/A
☐ Floor Area Ratio ☐ Density: N/A
 Parking Required: 810 (TOTAL)
 Parking Provided: 875 (TOTAL)
 # Of Buildings: N/A
 Height: N/A
 Setbacks: N- N/A S- N/A
 E- N/A W- N/A

In the following space, please describe the project or the request

PLEASE CONSIDER THIS AS A REQUEST FOR A USE PERMIT TO ALLOW THE CONSTRUCTION OF A 25,000 SF PURE FITNESS HEALTH CLUB AT THE SHEA/SCOTTSDALE EAST SHOPPING AT 7330 EAST SHEA BOULEVARD. FOLLOWING THE APPROVAL OF THE USE PERMIT, MITTERSTADT COOPER & ASSOCIATES, LTD WILL SUBMIT CONST. DOC FOR THE IMPROVEMENTS. THE CLUB WILL FEATURE COMPLETE EXERCISE FACILITIES INCLUDING AEROBICS, CARDIOVASCULAR EQUIP. BIKING AND FREE WEIGHT AREAS, AS WELL AS THE NECESSARY LOCKERS & RESTROOM FACILITIES. VERY MINOR MODIFICATIONS CONSISTING OF NEW ENTRANCE DOORS AND THE INFILL OF TWO EXISTING ROLLUP DOORS WILL BE REQUIRED. THIS WILL BE THE SIXTH PURE FITNESS FACILITY IN THE PHX METROPOLITAN AREA AND WILL BE A STATE OF THE ART CLUB AND A MAJOR ASSET FOR THE CENTER

THE TALK AFS
538-PA-2002

11/7/2002

(If an additional page(s) is necessary, ple

ATTACHMENT #1

1-UP-2003

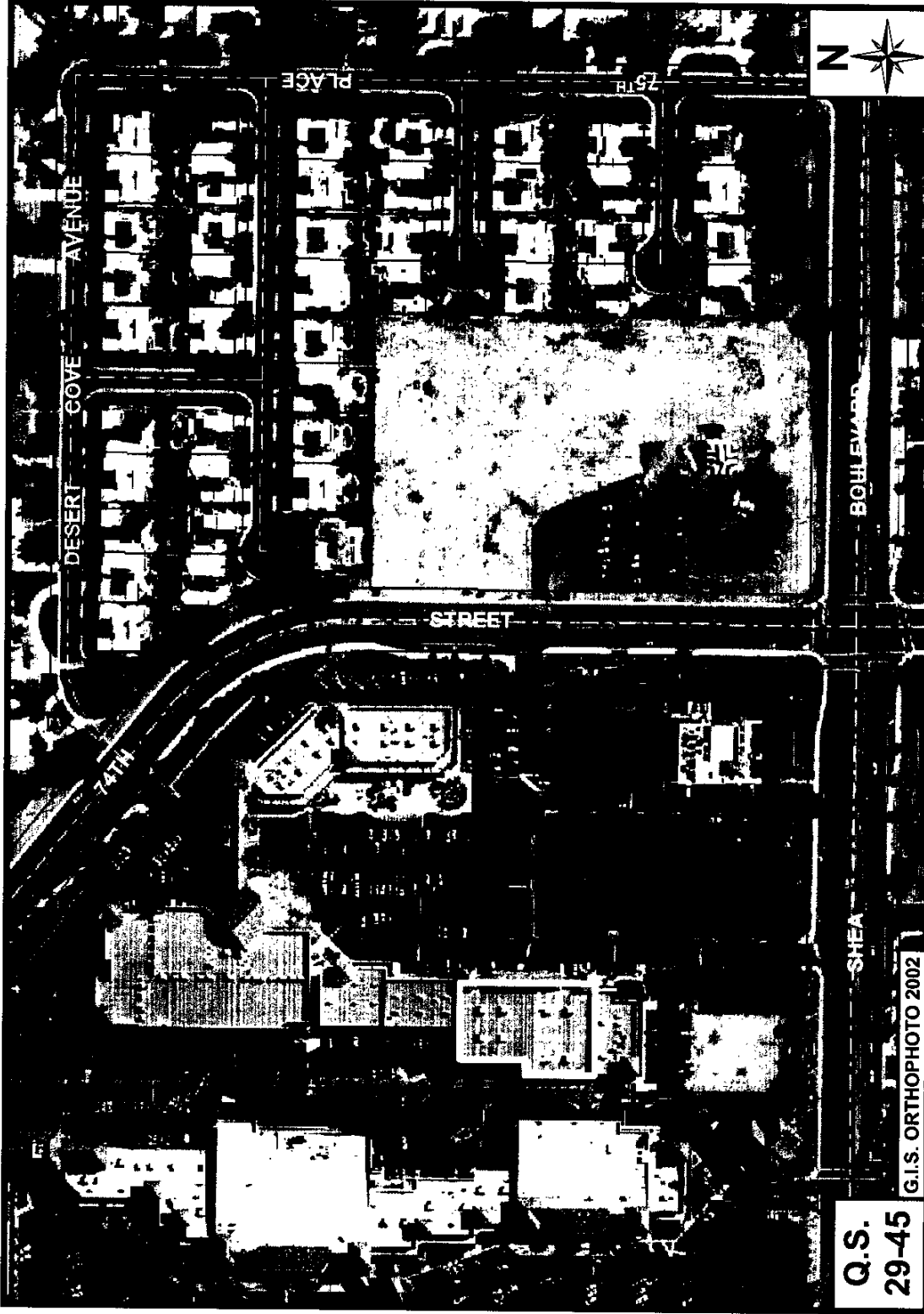
1/8/2003



1-UP-2003

Pure Fitness

ATTACHMENT #2



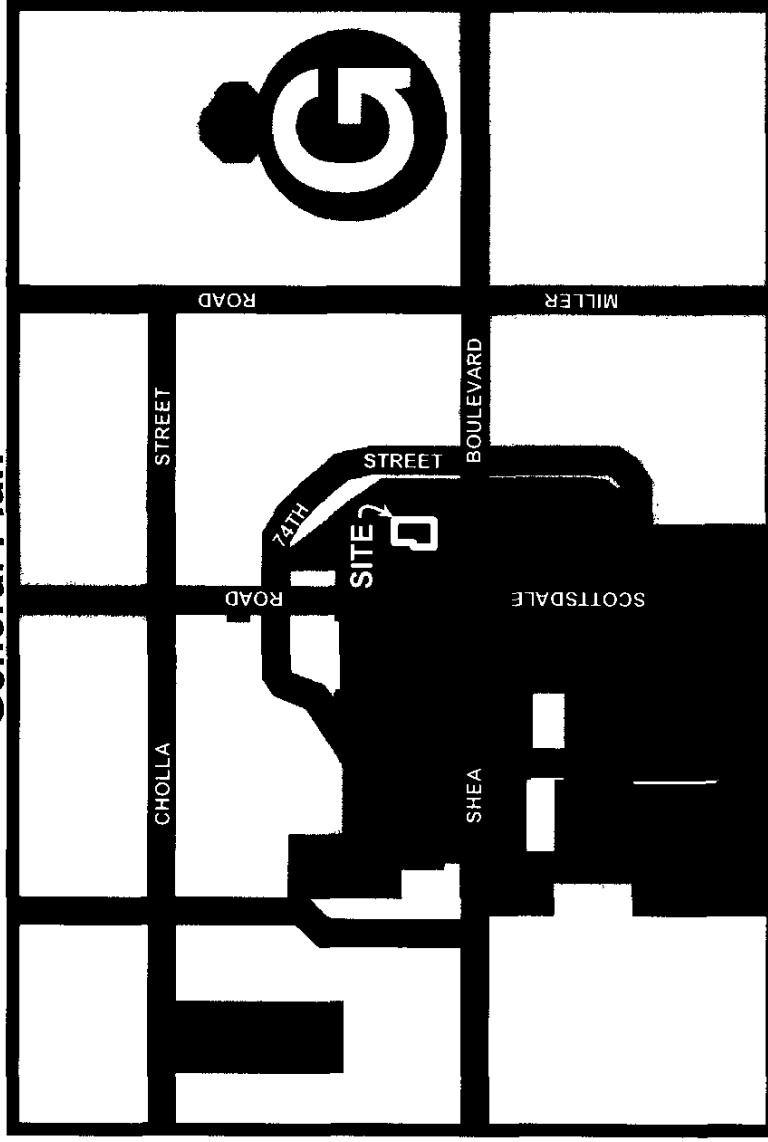
Q.S.
29-45

Pure Fitness

1-UP-2003

ATTACHMENT #2A

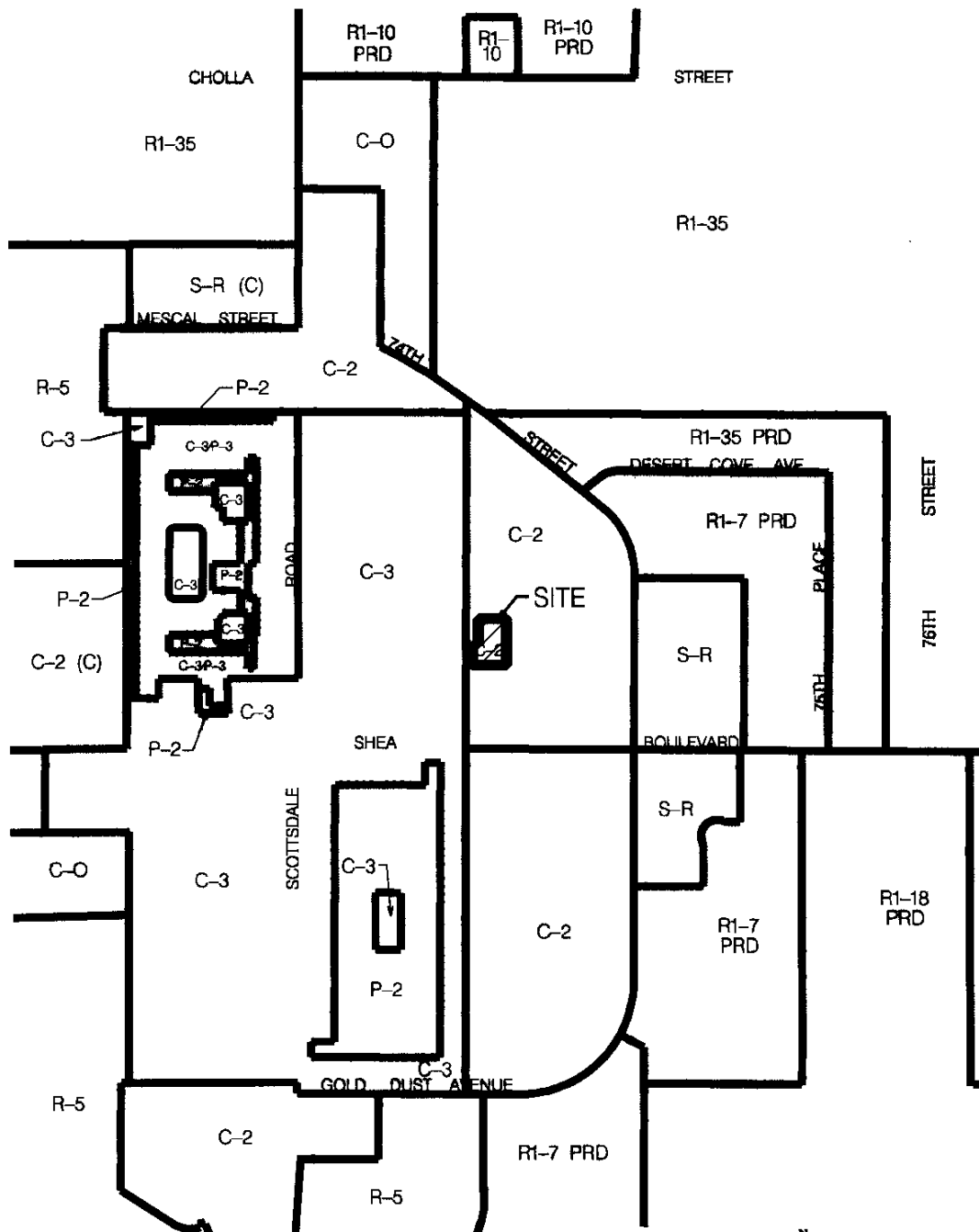
General Plan



- | | | | |
|--|---|--|--|
| | Rural Neighborhoods | | Commercial |
| | Suburban Neighborhoods | | Office |
| | Urban Neighborhoods | | Employment |
| | Mixed-Use Neighborhoods | | Natural Open Space |
| | Resorts/Tourism | | Developed Open Space (Parks) |
| | Shea Corridor | | Developed Open Space (Golf Courses) |
| | Mayo Support District | | Cultural/Institutional or Public Use |
| | Regional Use District | | State Trust Lands under State Land Commissioner's Order #078-2001/2002 |
| | McDowell Sonoran Preserve (as of 3 /2002) | | |
| | Recommended Study Boundary of the McDowell Sonoran Preserve | | |
| | City Boundary | | |



1-UP-2003
ATTACHMENT #3



1-UP-2003
ATTACHMENT #4



STIPULATIONS FOR CASE 1-UP-2003

PLANNING/ DEVELOPMENT

1. **CONFORMANCE TO DEVELOPMENT SUBMITTAL.** Development shall conform with the site plan submitted by *Mittelstaedt, Grover, Cooper, Ltd.* and signed/dated 12/30/02. These stipulations take precedence over the above-referenced site plan. Any proposed significant change, as determined by the Zoning Administrator, shall be subject to subsequent public hearings before the Planning Commission and City Council.
2. *No outdoor address or speaker systems are allowed.*
3. **CONFORMANCE TO APPLICANT LETTER.** Development shall conform with the parking lot standards documented in the letter submitted by Gary K. Herberger of Herberger Enterprises, Inc. and dated January 3, 2003 and shall be subject to Staff Approval review for any change of tenant occupancy in this commercial center.

Traffic Impact

Conditional Use Permit Application

Health Studio – “Pure Fitness”

1-UP-2003

7330 E. Shea Boulevard 1/28/03

Traffic Summary

This health studio is proposed for an existing building in a shopping center at the northeast corner of Shea Boulevard and Scottsdale Road. The center has two main interconnected components, with the west section facing Scottsdale Road and the east section facing 74th Street. From the health studio, located in the east section, it is possible to access 74th Street, Shea Boulevard, or Scottsdale Road. It is anticipated that most of the access to the health studio will be from 74th Street and Shea Boulevard, the frontages of the east section. The east side of the center has full left turn access to 74th Street and right turn access to Shea Boulevard. Full left turn access from the overall center is available to Shea Boulevard in the middle of the south side of the center.

In order to access traffic impact, an estimation of the trips related to the project is developed. The Pure Fitness health studio will occupy existing commercial space which otherwise could be used for some general commercial use. The table, below, contains the trip generation for the health studio use compared with general shopping center use. The general commercial use has a somewhat higher AM and PM peak hour rate, and a higher daily rate. The health studio is estimated to generate 300 “external trips” per typical weekday, 18 of which will occur during the A.M. peak hour and 65 of which will occur during the P.M. peak hour. External trips are those accessing the public street system. 30 additional daily “internal trips” will not use the street, being direct visits to and from the new health studio to and from other existing on-site uses. The equivalent space for general commercial shopping center use, generates 971 daily, 23 AM peak hour, and 85 PM peak hour trips, with the internal trips already reflected in those numbers.

LAND USE	SIZE	EXTERNAL TRIPS GENERATED COMPARED TO GENERAL COMMERCIAL USE						
		DAILY	A.M. PEAK HOUR (7:00-8:00 A.M.)			P.M. PEAK HOUR (5:00-6:00 P.M.)		
			IN	OUT	TOTAL	IN	OUT	TOTAL
Health Studio (proposed)	22,633 S.F.	300	10	8	18	35	30	65
Shopping Center (for comparison)	22,633 S.F.	971	14	9	23	41	44	85

As shown, above, the health studio use will add less volume than otherwise allowed by right, at the Shea Boulevard and 74th Street driveways, and to the adjacent Shea Boulevard and 74th Street intersection. The business hours of the health studio are somewhat different from regular commercial space, with this health studio to have significant business before 7:00 AM and after 6:00 PM. The hours of operation of the health studio will be Monday to Friday 5:00 AM to 10:00 PM, and Saturday and Sunday from 8:00 AM to 7:00 PM.

Adjacent to the shopping center, Shea Boulevard, with a capacity of 55,000, carries 38,000 vehicles per day, and 74th Street with a capacity of 30,000, carries 6,000. Traffic volume generated by the proposed conditional use is compatible with area traffic conditions. This health studio use traffic, being comparable with other commercial uses that could occupy the space by right, will not, pursuant to the Zoning Ordinance, Section 1.401 A. 2., “impact on surrounding areas resulting from an unusual volume or character of traffic.”



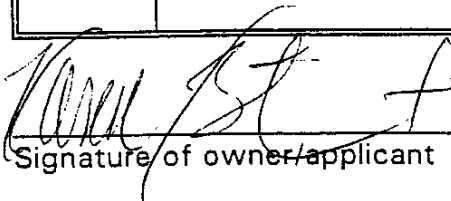
538-PA-02

CASE NUMBER _____
LOCATION OF APPLICATION 7330 E. SHEA BLVD. SCOTTSDALE AZ

COMMUNITY INPUT CERTIFICATION

It is valued in the city of Scottsdale that all applicants for rezoning, use permit, and/or variances will inform, and will invite input from, neighboring residents and other parties that may be impacted by the proposed use. The applicant shall submit this completed certification with the application as verification that such contact has been made. Community input was solicited as documented below:

Date	Name (person, organization, etc.) and Address	Contact	Format	
		Meeting	Phone	Letter
				+
	SEE ATTACHMENT			


Signature of owner/applicant

10/31/2002
Date

538-PA-2002

11/7/2002

ATTACHMENT #7

1-UP-2003

1/8/2003

ER BOULEVARD ■ SCOTTSDALE, ARIZONA 85251 ■ PHONE (602) 994-2600

Harkins Theater
7354 E. Shea
Scottsdale, AZ 85260

Huddle Furniture
7342 E. Shea, #106
Scottsdale, AZ 85260
(K&B Furniture)

Long Wong's
7366 E. Shea, #104
Scottsdale, AZ 85260
(Tom Maricle)

Learning Express
7342 E. Shea, #101
Scottsdale, AZ 85260
(B&B Toys, LLC)

Mephisto
7342 E. Shea, #104
Scottsdale, AZ 85260
(SCS Comfort, Inc.)

Paris-Paris
7366 E. Shea, #102
Scottsdale, AZ 85260

Quizno's
7366 E. Shea, #107
Scottsdale, AZ 85260
(PMGA Enterprises, Inc.)

Samurai Sam's
7366 E. Shea, #112
Scottsdale, AZ 85260
(S & R Crescent)

Bella Mani
Kevin T. Phan, dba
7366 E. Shea, #111
Scottsdale, AZ 85260

Bellini Juvenile Designer Furniture
7366 E. Shea, #106
Scottsdale, AZ 85260
(Pregler Enterprises, Inc.)

Blue Burrito Grille
7318 E. Shea, #101
Scottsdale, AZ 85260
(Restaurant Group I, LLC)

Coco's
7388 E. Shea
Scottsdale, AZ 85260
(Fri-M Corp)

Coffee Plantation
7366 E. Shea, #101
Scottsdale, AZ 85260
(Kahawa, Inc.)

Continental Lifestyles
7342 E. Shea, #110
Scottsdale, AZ 85260

Disc Connection, Inc.
Dbas The CD Place
7366 E. Shea, #110
Scottsdale, AZ 85260

Edufit
7366 E. Shea, #109
Scottsdale, AZ 85260
(Ztak, Inc.)

Egani Corporation
dba Via Gelato
7366 E. Shea, #105
Scottsdale, AZ 85260

↓
SCOTTSDALE UNIFIED
SCHOOL DISTRICT 48
PHOENIX, AZ 85018
602 952 6100

OPENING STATEMENT

COMMISSIONER OSTERMAN read the opening statement which describes the role of the Planning Commission and the procedures used in conducting this meeting.

CHAIRMAN GULINO stated case 11-AB-2002 has been moved from the expedited agenda to the regular agenda. He further stated Mr. Deeley has additional information on that case and will hand it out to the Commission.

EXPEDITED AGENDA

1-UP-2003 (Pure Fitness Use Permit) request by Mittlesteadt & Cooper Associates Ltd, applicant, Shea East LLC, owner for a conditional use permit for a health studio in a 25,000 +/-sq ft tenant space of a building located at 7330 E Shea Blvd, Suites 101 & 102 with Central Business District (C-2) zoning.

MS. WAUWIE presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER HENRY inquired if the fitness center was in that space before. Ms. Wauwie replied in the negative. Commissioner Henry inquired if it is proposed they put the fitness center in that space. Ms. Wauwie replied in the affirmative. Commissioner Henry inquired if they had a special permit to occupy part of this space to do pre-registration and have their equipment there for people to try out. Ms. Wauwie stated they would have needed a conditional use permit for their operations as a health club. Commissioner Henry stated they are doing that now before the Commission has even voted on this. She inquired why are they being allowed to do that. Ms. Wauwie stated that maybe they just moved in prematurely. Commissioner Henry inquired if that was legal.

COMMISSIONER STEINBERG asked what was the prior use in this space.

KAREN BETENCOURT, Mittlesteadt & Cooper Associates Ltd, applicant, stated to answer Commissioner Henry's question they are using an adjacent suite that was provided to them by the landlord as a sales office and is not part of the use permit. She further stated to answer Commissioner Steinberg's question the space has always been vacant.

COMMISSIONER STEINBERG inquired if there would be additional parking needs based on their use compared to the prior use. Ms. Betencourt stated there was a parking study done and the parking needs for the fitness center would be less than what normal commercial would require.

COMMISSIONER OSTERMAN MOVED TO FORWARD CASE 1-UP-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET ALL OF THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER STEINBERG.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

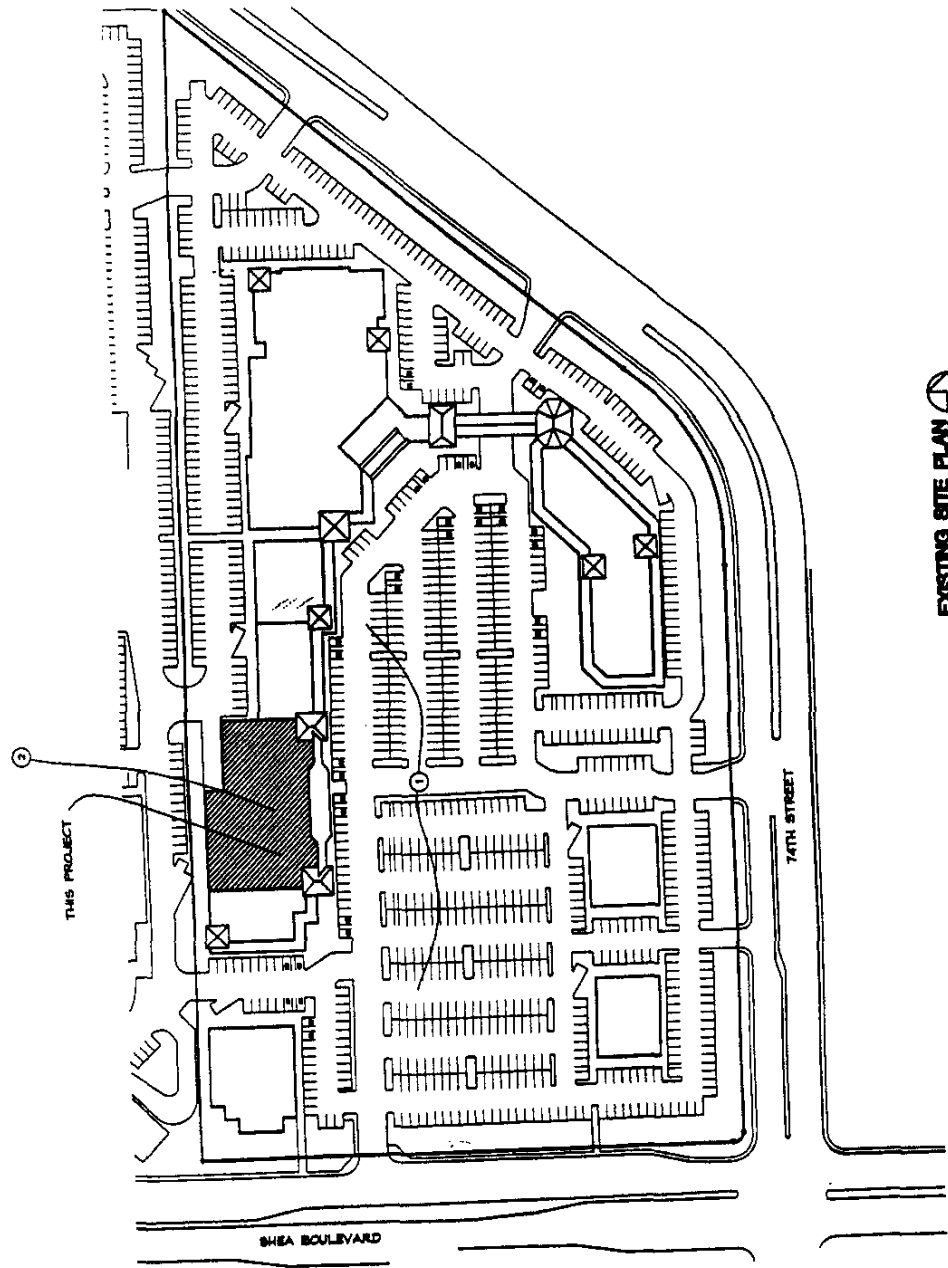
APPROVED

ATTACHMENT #8

KEYNOTES

1. EXISTING SITE PLAN TO BE SHOWN
2. EXISTING SITE TO BE SHOWN

Mittelstadt
Grover
Cooper, Ltd.
ARCHITECTURE - INTERIORS
1001 N. WILSON AVENUE, SUITE 200
PHOENIX, ARIZONA 85006
PHONE: 602-251-1111 FAX: 602-251-1112
WWW.MITTELSTADTGROVERCOOPER.COM



EXISTING SITE PLAN
SCALE: 1" = 20'

PURE FITNESS *It's for everybody*
7330 EAST SHEA BOULEVARD, SUITES 101 & 102
SCOTTSDALE, ARIZONA 85260

PROJECT TITLE	8
DATE	
BY	
FOR	
PROJECT NUMBER	

CITY COUNCIL REPORT



MEETING DATE: April 15, 2003

ITEM NO.

4

GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT

Mountain View Park

REQUEST

Request to approve a Final Plat
25-PP-2002

Key Items for Consideration:

- Applicant has enhanced Development Standards that surpass code requirements.
- Applicant is nearing approval on final construction documents.
- No changes in lot design have been made since approval of preliminary plat.

Related Policies, References:

47-ZN-80, 25-PP-2202, 58-DR-2002, 70-DR-2002

OWNER

Denali National Trust
480-443-1905

APPLICANT CONTACT

Jonathon Vento
92nd Street Office Investors LLC
480-451-9077

LOCATION

Northwest corner of 96th Street & Mountain View

BACKGROUND

Zoning.

The site is within the Commercial Office -Conditional (C-O/C) zoning district which allows for business and professional offices, and a very limited amount of retail and service uses.

Context.

This subdivision is located south of Shea Boulevard, at the northwest corner of 96th Street and Mountain View Road. Residential zoning (R1-10 and R-5) is found on the east and south sides of the property while office/commercial zoning (C-O) on the west and north sides.

**APPLICANT'S
PROPOSAL**

Goal/Purpose of Request.

This request is to approve a final plat. The applicant has resolved the site engineering issues and their submitted final plat final plat complies with the preliminary plat and is attached to this report.

Community Impact.

The proposed plat is adjacent to existing residential developments on the east and

south sides. The applicant proposes placing requirements on the plat that surpass some of the code-required development standards to help make the project become more compatible with the existing neighborhoods. The following Development Standards have been modified:

- Reduce allowable building heights to 18 feet along 96th Street, which borders the Scottsdale Ranch residential community.
- Reduce allowable building heights from to 30 feet for the rest of the subdivision.
- Increase building setback along 96th Street to 40 feet.
- Increase building setback along Mountain View Road to 30 feet (minimum of 35 feet will be still required where parking occurs between a building and the street).
- Reduce floor area ratio from .60 to .50 for all lots.
- 40-foot landscape easement along 96th Street.
- 30-foot landscape easement along Mountain View Road.
- 20-foot landscape easement along all internal streets.

IMPACT ANALYSIS

Traffic.

This development is part of a larger tract that has recently developed with stipulated inter-parcel connectivity. This connectivity provides, through a map of dedication, for access of all developed sections of the original tract that extends from Shea Boulevard on the north to Mountain View Road on the south and from 92nd Street on the west to 96th Street on the east. This connectivity will lessen the traffic burden on the public street network because of the availability of travel between individual sections of the development.

This plat will have direct access to 96th Street and to Mountain View Road, with access to 92nd Street and Shea Boulevard via the public access easement on the map of dedication. Individual lots in this plat will access only the internal street system through shared driveway access easements at the property lines. The internal roadway system includes three streets that loop through the project. The applicant has also provided a pedestrian cross-access easement on lot 6, to connect with the recently approved church facility to the south.

Parking.

During the Development Review Board approval process, each individual lot will be required to provide their required parking on site.

Development information.

- | | |
|---------------------------------|---|
| • <i>Existing Use:</i> | Vacant land |
| • <i>Buildings/Description:</i> | 22 lot commercial subdivision |
| • <i>Parcel Size:</i> | Range from ¾ of an acre to 2 and ¼ of an acre. |
| • <i>Other:</i> | Private roadway improvements –shown as public access easements. |

Water/Sewer.

Water and sewer lines will be constructed by the developer and dedicated to the city for maintenance.

Police/Fire.

Rural/Metro Fire Department reviewed this plan and it conforms to the requirements for fire apparatus access.

Schools District comments/review.

Being a commercial subdivision, the proposed plat will not have an affect on school enrollment.

Community involvement.

The applicant has held meetings with the president of the McCormick Ranch homeowners association and the executive director of Scottsdale Ranch. Staff has received a couple of phone calls asking for more information about the project prior to writing this report.

STAFF RECOMMENDATION

Recommended Approach:

Staff recommends that the final plat be approved as presented.

Proposed Next Steps:

Approval will enable the final plat to be recorded, establishing lots, streets, easements and common tracts.

**RESPONSIBLE
DEPT(S)****Planning and Development Services Department**

Current Planning Services

STAFF CONTACT(S)

Bill Verschuren

Senior Planner

480-312-7734

E-mail:

bverschuren@ScottsdaleAZ.gov


Randy Grant

Chief Planning Officer

480-312-7795

E-mail: rgrant@ScottsdaleAz.gov

APPROVED BY

 *for KE*

Kroy Ekblaw
Planning and Development Services General Manager

4/2/23
Date

Kroy Ekblaw

Planning and Development Services General Manager

Ed Gawf
Deputy City Manager

4/2/03
Date

Ed Gawf

Deputy City Manager

ATTACHMENTS

1. Aerial Map
2. Final Plat
3. Preliminary Plat
4. Development Review Board Staff Report
5. Development Review Board Minutes
6. Community Input Certification

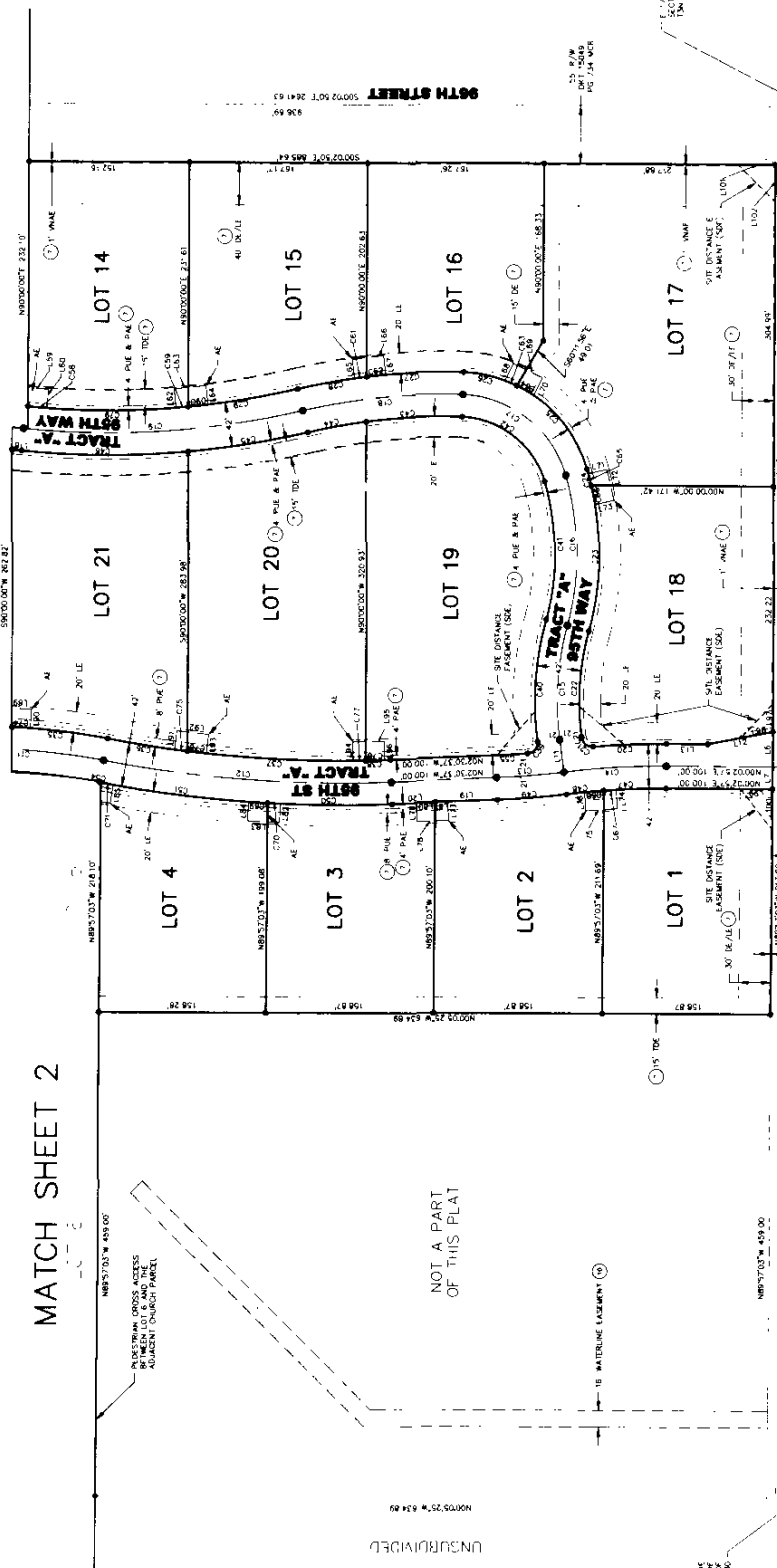


25-PP-2002
58-DR-2002

Mountain View Park

MATCH SHEET 2

MATCH SHEET 2



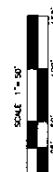
MOUNTAIN VIEW ROAD

- EXISTING EASEMENTS**
- EASEMENTS AS SHOWN ON THE MAP OF RECORD FOR MOUNTAIN VIEW PARK AS RECORDED IN BOOK PAGE.
 - EASEMENT AND RIGHTS INCIDENT THEREON FOR WATER AND AS SET FORTH IN INSTRUMENT RECORDED OCTOBER 20, 1987 IN DEED BOOK PAGE 537.
- NOTE: TRACT "A" COVERS THE SAME AREA AS SHOWN ON THE MAP OF RECORD FOR MOUNTAIN VIEW PARK, BOOK OF MAPS, PAGE 537, SHOWN AS A PUBLIC ACCESS EASEMENT AND PUE.

SYMBOL LEGEND

■	FOUND BRASS CAP IN HOLE	AE	SHARED DRIVEWAY ACCESS EASEMENT
▲	FOUND 1/2" REBAR NO CAP PROPERTY CORNER	PAE	VEHICULAR NON-ACCESS EASEMENT
●	FOUND BRASS CAP FLUSH	LE	LANDSCAPE EASEMENT
○	BRASS CAP FLUSH TO BE SET	PAE	PUBLIC ACCESS EASEMENT
○	1/2" REBAR THE SMALL TO BE SET	SE	SITE DISTANCE EASEMENT
○	PROPERTY BOUNDARY	W/FW	ROOT-OF-WAY
○	EASEMENTS AS NOTED	TE	TEMPORARY DRAINAGE EASEMENT
○	PUE	PE	PUBLIC UTILITY EASEMENT
○	CE	CE	CE

FINAL PLAT
IRONWOOD SQUARE
SCOTTSDALE, ARIZONA



DATE: 1-21-80
DRAWN BY: [Name]
CHECKED BY: [Name]
SCALE: 1"=50'

EXISTING EASEMENTS

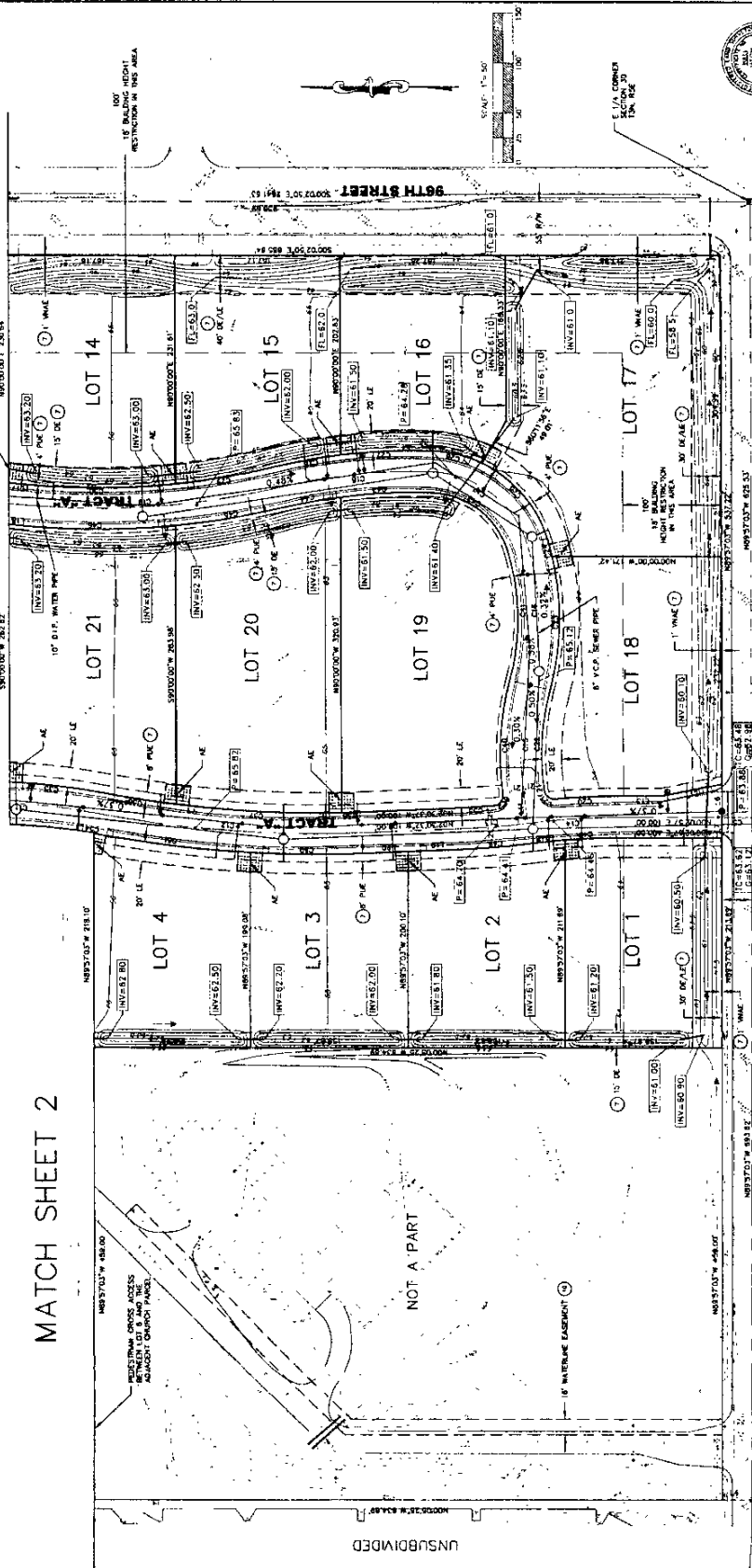
1. 15' BUREAU OF LAND MANAGEMENT (BLM) EASEMENT FOR MOUNTAIN VIEW PARK
2. 10' D.I.F. WATER PIPE EASEMENT
3. 10' D.I.F. WATER PIPE EASEMENT
4. 10' D.I.F. WATER PIPE EASEMENT
5. 10' D.I.F. WATER PIPE EASEMENT
6. 10' D.I.F. WATER PIPE EASEMENT
7. 10' D.I.F. WATER PIPE EASEMENT
8. 10' D.I.F. WATER PIPE EASEMENT
9. 10' D.I.F. WATER PIPE EASEMENT
10. 10' D.I.F. WATER PIPE EASEMENT

MATCH SHEET 2

MATCH SHEET 2

APPROVED

11/26/02
DATE



SYMBOL LEGEND

- 1. 15' BUREAU OF LAND MANAGEMENT (BLM) EASEMENT FOR MOUNTAIN VIEW PARK
- 2. 10' D.I.F. WATER PIPE EASEMENT
- 3. 10' D.I.F. WATER PIPE EASEMENT
- 4. 10' D.I.F. WATER PIPE EASEMENT
- 5. 10' D.I.F. WATER PIPE EASEMENT
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NO.	DESCRIPTION	DATE	BY	CHECKED
1	15' BUREAU OF LAND MANAGEMENT (BLM) EASEMENT FOR MOUNTAIN VIEW PARK	11/26/02	J. L. LAMBERT	J. L. LAMBERT
2	10' D.I.F. WATER PIPE EASEMENT	11/26/02	J. L. LAMBERT	J. L. LAMBERT
3	10' D.I.F. WATER PIPE EASEMENT	11/26/02	J. L. LAMBERT	J. L. LAMBERT
4	10' D.I.F. WATER PIPE EASEMENT	11/26/02	J. L. LAMBERT	J. L. LAMBERT
5	10' D.I.F. WATER PIPE EASEMENT	11/26/02	J. L. LAMBERT	J. L. LAMBERT
6	10' D.I.F. WATER PIPE EASEMENT	11/26/02	J. L. LAMBERT	J. L. LAMBERT
7	10' D.I.F. WATER PIPE EASEMENT	11/26/02	J. L. LAMBERT	J. L. LAMBERT
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7	10' D.I.F. WATER PIPE EASEMENT	11/26/02	J. L. LAMBERT	J. L. LAMBERT
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630-P-A-2002
10/3/02

25-PP-2002
58-DR-2002

SLO
SURVEYING & LAND DEVELOPMENT
1000 S. LAMBERT AVE.
SCOTTSDALE, ARIZONA 85261
(480) 944-4771

A PRELIMINARY PLAT FOR
MOUNTAIN VIEW PARK
SCOTTSDALE, ARIZONA

TO: DEVELOPMENT REVIEW BOARD **DATE:** November 21, 2002
FROM: CURRENT PLANNING SERVICES
SUBJECT: CASE 25-PP-2002 & 58-DR-2002
REQUEST: Preliminary Plat, Design Guidelines, and Streetscape Design for a Commercial Subdivision
PROJECT NAME: Mountain View Park
LOCATION: NWC 96th Street & Mountain View

DEVELOPER/OWNER: Denali National Trust
ARCHITECT/DESIGNER: DFD Architecture
ENGINEER: Erickson & Meeks Engineering
APPLICANT/COORDINATOR: Shea Commercial/Jonathon Vento
8940 E Raintree Dr Ste 200
Scottsdale, AZ 85260
480-451-9077-204

STAFF RECOMMENDATION: APPROVE subject to the attached stipulations.

CONCURRENCE: The proposal has been reviewed and approved by the Scottsdale Airport.

PUBLIC COMMENTS: Staff has received no comment regarding this proposal as of the writing of this report.

REQUEST: Preliminary Plat, Design Guidelines, and Streetscape design for a commercial subdivision.

LOCATION & ZONING: The project is located south of Shea Boulevard, at the northwest corner of 96th Street and Mountain View Road. The property is zoned Commercial Office District, Conditional (C-O/C).

CHARACTERISTICS: The site generally is flat with some native vegetation. A small wash traverses the eastern portion of the site. Surrounding development includes Scottsdale Ranch residential community to the east, townhouse development to the south, vacant land and a church to the west (the vacant land was recently approved for office condominiums), and the office campus of PCS to the north

HISTORY: The property was rezoned to C-O/C in 1980 (case number 47-ZN-80).

DISCUSSION:

Preliminary Plat: The applicant proposes a 22-lot subdivision for commercial office development. Lot areas range in size from about $\frac{3}{4}$ of an acre to $2\frac{1}{4}$ acres.

Development Standards: The applicant proposes placing requirements on the plat that surpass some of the code-required development standards, as follows:

- ❑ Reduce allowable building heights to 18 feet along 96th Street, which borders the Scottsdale Ranch residential community.
- ❑ Reduce allowable building heights to 30 feet for the rest of the subdivision.
- ❑ Increase building setback along 96th Street to 40 feet.
- ❑ Increase building setback along Mountain View Road to 30 feet (minimum of 35 feet will be still required where parking occurs between a building and the street).
- ❑ Reduce floor area ratio from .60 to .50 for all lots.
- ❑ 40-foot landscape easement along 96th Street.
- ❑ 30-foot landscape easement along Mountain View Road.
- ❑ 20-foot landscape easement along all internal streets.

Access/Circulation: The subdivision will be accessed from a driveway off 96th Street and a driveway off Mountain View Road. No lots will access directly from these perimeter streets. The internal roadway system includes three streets that loop through the project.

Other circulation components include:

- ❑ Vehicular cross-access with the recently approved office condominium project to the west.
- ❑ Shared driveway access easements between lots.
- ❑ Pedestrian cross-access easement on lot 6, to connect with the recently approved church facility to the south.

Design Guidelines and Streetscape Design: The preliminary plat is accompanied by the Design Guidelines for Mountain View Park, and streetscape plan. The design guidelines address building setbacks; architectural character; a landscape palette; parking, driveways and sidewalk design; exterior lighting; and site amenities, such as plazas and site furniture. The streetscape plan consists of a description in the Design Guidelines, and a colored master landscape plan. The tree palette includes Mesquites, Blue Palo Verde, Acacias, Sissoo and Mexican Fan Palms.

KEY ISSUES:

- ❑ The applicant proposes a 42-foot wide private tract to be dedicated to the City as a roadway easement. The typical City right-of-way for a local commercial and industrial type street is 60-foot wide. The typical cross section includes 18 feet of pavement to the back of curb, a 5-foot sidewalk, and 5 feet beyond the sidewalk for public utilities. The applicant's request includes 16 feet to the back of curb and a 5-foot sidewalk. The Traffic Engineering Department reviewed the applicant's proposal, and requires an additional 4 feet beyond the sidewalk for public utilities, for a tract width of 50 feet.

Suzanne Gunderman
Community Planner
480-312-7087

ATTACHMENTS:

- #1-Project Narrative
- #2-Aerial
- #3-Zoning Map
- #4-Context Photos
- #5-Preliminary Plat
- #6-Design Guidelines for Mountain View Park
- #7-Master Landscape Plan
- #8-Master Vehicular/Pedestrian Access Plan
- A-Stipulations
- B-Ordinance Requirements

VICE CHAIRMAN POTTER inquired if these office condos would be for sale or for lease. **MR. RUMPETTIN** replied they would be for sale.

VICE CHAIRMAN POTTER asked a series of questions regarding the parking plan. **JOE TYNDALL** provided an overview of the proposed parking plan. He provided information on the off hours parking.

MS. GALE stated she loved the color scheme. She stated she would like them to reconsider where the red and orange color combinations occur.

COUNCILMAN ORTEGA stated they might want to look at building E to see that bridge has an arch with that section break.

MR. HEITEL stated he has been trying to do the math on the parking and it is not working for him. He further stated he does not know how it is going to work. Mr. Tyndall stated they are very comfortable with the parking plan.

VICE CHAIRMAN POTTER MOVED TO APPROVE CASE 57-DR-2002 WITH THE ATTACHED AND AMENDED STIPULATIONS REGARDING THE BUILDING HEIGHT BEING 36 FEET. WITH THE ADDITIONAL STIPULATION THAT THE ORANGE AND RED COLOR SCHEME ON BUILDING F BE ADJUSTED SO THOSE TWO COLORS DO NOT QUARREL. WITH THE ADDITIONAL STIPULATION THAT THE SHADOW ARCH ON THE BRIDGE ELEMENT ON BUILDING E BE ATTENDED TO. SECOND BY MR. CORTEZ.

THE MOTION PASSED BY A VOTE OF FOUR (4) TO ONE (1) WITH MR. HEITEL DISSENTING AND MR. SODEN ABSTAINING.

25-PP-2002

Mountain View Park
Preliminary plat
NWC 96th Street & Mountain View
DFD Architects, Architect/Designer

MS. GUNDERMAN presented this case as per the project coordination packet. She stated since the staff report was written the staff and the Applicant have met and resolved the issue regarding circulation. She further stated that she provided the board with revised stipulations at the study session. Staff recommends approval subject to the attached and revised stipulations.

(COUNCILMAN ORTEGA OPENED PUBLIC TESTIMONY.)

APPROVED 12-5-02

ATTACHMENT #5

ALAN BOCKAL, 9755 N. 94th Place, spoke in opposition to this request. He stated he gets the feeling that every part of Scottsdale is going to be built on or paved over. He further stated that he represents the coyotes and the birds. He noted in this poor economy there are plenty of vacant buildings and he does not understand why those buildings can't be used. He added he would love to see some part of Scottsdale saved for the critters.

(COUNCILMAN ORTEGA CLOSED PUBLIC TESTIMONY.)

COUNCILMAN ORTEGA inquired if there were any changes to the stipulations. Ms. Gunderman stated there was a stipulation added that addressed any landscaping lighting that was not shown, as part of the plan will need to be reviewed and approved by staff. There was also a stipulation that allows them to put in ironwood trees at the entrance of this project.

MS. GUNDERMAN reviewed the public comments she received on this case.

MR. HEITEL MOVED TO APPROVE CASE 25-PP-2002 WITH THE ATTACHED AND REVISED STIPULATIONS. SECOND BY VICE CHAIRMAN POTTER.

THE MOTION PASSED BY A VOTED OF SIX (6) TO ZERO (0).

60-DR-2002	The Bounders Casitas Site plan & elevations Boulders Parkway & Clubhouse Drive Urban Design Associates, Architect/Designer
------------	--

MR. WARD presented this case as per the project coordination packet. He stated amended stipulations were handed out in study session that was a result of a recent agreement with the neighbors and the developer. Included is the increasing of the density of the buffer between the two sites. Elimination of on street parking adjacent to the two properties. Staff recommends approval subject to the attached and revised stipulations.

MR. HEITEL inquired if they would allow lock out rooms on the casitas that can be independently rented out. Mr. Ward stated the lock out rooms have been stipulated to be eliminated.

MR. SODEN inquired if the curbside parking was going to be eliminated. Mr. Ward replied in the affirmative. There were originally 17 spaces not there would be 13 spaces.

APPROVED 12-5-02

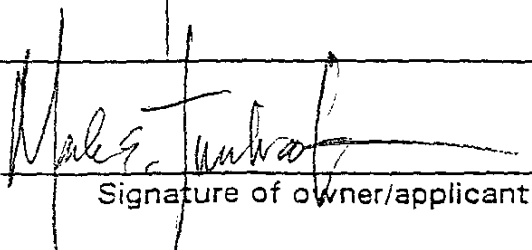


CASE NO: 96-PA-2002
PROJECT LOCATION: NWC 96th St. & Mountain View Dr.

COMMUNITY INPUT CERTIFICATION

It is valued in the City of Scottsdale that all applicants for rezoning, use permit, and/or variances will inform, and will invite input from neighboring residents, affected school districts, and other parties that may be impacted by the proposed use. The applicant shall submit this completed certification with the application as verification that such contact has been made.

DATE	NAME (Person, Organization, Etc. and Address)	Type	Of	Contact
		Meeting	Phone	Letter
June 4, 2002	EARTH SAGER	Rees - McCormick Ranch	mtg.	
June 6, 2002	KATHLEEN DAVIES	Ex. Dir. Scottsdale Ranch	mtg.	
	Joyce STATMAN	CCFR Coordinator	"	


Signature of owner/applicant

25-PP-2002
58-DR-2002

6.15.02
Date

ATTACHMENT #6

CITY COUNCIL REPORT



MEETING DATE: April 15, 2003

ITEM NO. 5 GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT

City of Scottsdale Well No. 123

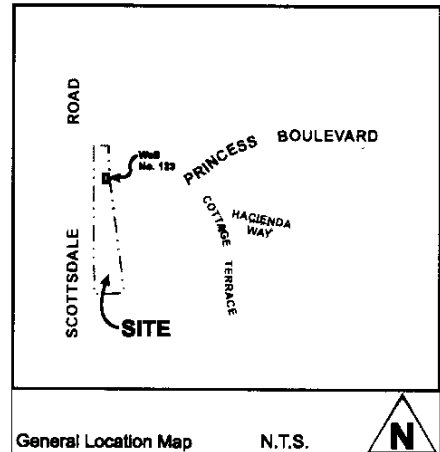
REQUEST

Request to approve a conditional use permit for a city well (municipal use) on a .17 +/- acre parcel located at the northeast corner of Scottsdale Road and East Princess Boulevard with Open Space (OS) zoning.

25-UP-2002

Key Items for Consideration:

- Groundwater from the well will be required to meet anticipated potable water needs of the City.
- Traffic generated by the well will be approximately 1 to 2 vehicles visiting the site per week.
- Well is placed on the far east side of the parcel to minimize the amount of disturbance in the scenic corridor.
- Wall enclosure will match the existing Scottsdale Princess Resort entry wall.
- New landscaping will be planted to help screen the wall enclosure.
- Planning Commission recommends approval, 7-0.



OWNER

City of Scottsdale
480-312-5881

APPLICANT CONTACT

Larry Leischner
Stanley Consultants Inc
602-912-6500

LOCATION

Northeast corner of Scottsdale Rd & East Princess Blvd

BACKGROUND

Zoning.

The site is zoned Open Space (O-S). The Open Space zoning district allows municipal uses (well site) to be built with the approval of a conditional use permit.

Context.

The site is located along the east side of Scottsdale Road, north and south of Princess Drive, on an approximate 6.3-acre parcel. The proposed well, located on the northeast corner of the parcel north of Princess Drive, will take up only .17 acre. The properties surrounding the parcel consist of a variety of commercial/office and multi-family zoning districts. North and east of the

proposed well, beyond the open space, is a vacant parcel zoned Planned Regional Center, Planned Community Development District (PRC PCD). South of the well, again, beyond the open space, is a built-out shopping center zoned Central Business District (C-2). To the west of the site, across Scottsdale Road in the City of Phoenix, is an existing apartment complex zoned the equivalent of the City of Scottsdale's Multi-Family Residential District (R-5).

Currently, the parcel is owned by the United States Bureau of Reclamation (BOR) and intended to be included in a Recreational Land Use Agreement (RLA) with the city. The city has been granted permission to apply for any type of city approval and permit to construct the well while the agreement is being finalized.

**APPLICANT'S
PROPOSAL****Goal/Purpose of Request.**

Currently, the City of Scottsdale delivers potable water from both surface and groundwater sources. While the majority of potable water delivered to residents of the City has historically been obtained from wells, the City is developing system improvements that will maximize surface water utilization and reduce reliance on groundwater in compliance with the Arizona Groundwater Management Act of 1980. However, since allowances exist for the use of groundwater to meet potable demand, Scottsdale plans to maintain a network of wells to supplement surface supplies during peak summer demand periods.

The 2001 Water Resources Master Plan envisioned the addition of five new wells to help meet anticipated peaking and back-up demands in the northern areas of the City by 2006. This request for a conditional use permit will allow the continuation of design activities for the addition of one of the five planned new wells (Well #123). Well #123 is second in the series of five new wells planned for construction (Well #141 was completed in 2002).

An 8-foot concrete block wall, to match the existing Scottsdale Princess Resort entry wall, will be constructed around the pump and associated equipment. The site contains a variety of natural vegetation. Existing vegetation and the Scottsdale Princess Resort entry walls adequately screen the west and south walls of the proposed well. The applicant will add a variety of landscaping to screen the north and east sides of the well enclosure.

Community impact.

The Ordinance requires that all uses requiring a conditional use permit be in the general public best interest. Furthermore, it also confirms that a municipal use should not be potentially detrimental to the adjacent property. For these purposes, the well and associated pump equipment will be contained within an 8-foot wall. Additional landscaping will also be planted around the north and east sides to help ensure the facility is screened. The Development Review Board will review the integration of the wall and landscaping to assure visual compatibility. The facility will not create an adverse impact on adjacent properties. Traffic generated by the use will be low. Lighting will be low-level and will also be contained within and below the walls of the facility.

IMPACT ANALYSIS

Traffic/Parking

Traffic generated by the proposed well will not be significant to this area; approximately 1 to 2 vehicles will visit the site per week. Access to the site will use a driveway off of Scottsdale Road, approximately 350 feet north of Princess Drive. The driveway will consist of decomposed granite. Parking for one vehicle and vehicle maneuvering is available within the site.

Scottsdale Road will be reconstructed and expanded to six median divided lanes with a separate sidewalk by 2004. This project will be designed so that the entrance drive will be perpendicular to the widened Scottsdale Road, and so that all facilities are set back far enough to the east so as to not be in conflict with the new road and sidewalk. Due to the extremely low use of the driveway; a deceleration lane is not required along existing and proposed Scottsdale Road.

Relative to the conditional use permit traffic criterion, this well site will not have a negative impact on the surrounding area caused by an unusual volume or character of traffic.

Development information.

- *Existing Use:* Vacant (open space)
- *Buildings/Description:* No buildings proposed, 8-foot perimeter wall around the pump equipment
- *Parcel Size:* 6.3 acres, well and improvements will take up only .17 acre of the 6.3 acres
- *Building Height Allowed:* NA
- *Existing Building Height:* NA

Schools District comments/review.

The Paradise Valley Unified School District has been notified of this application. Staff has not received any comments from the school district regarding this proposed well.

Open space, scenic corridors.

The well is located within zoned open space. This is the northern portion of the large open space located between the Central Arizona Project (CAP) canal and Frank Lloyd Wright Boulevard between Scottsdale and Pima Roads. The parcel, within the open space, is narrow and extends only 135 feet east of Scottsdale Road. There is a 100-foot scenic corridor along this section of Scottsdale Road. The well and enclosure have been placed on the far east side of the parcel to minimize the amount of building in the scenic corridor.

Policy implications.

- Ensure renewable, long-term water supplies for the community.
- The front 27 feet of the 60-foot-wide well enclosure encroaches into the 100-foot scenic corridor along Scottsdale Road.

Use Permit criteria.

Conditional use permits, which may be revocable, conditional, or valid for a specified time period, may be granted only when expressly permitted only after the Planning Commission has made a recommendation and the City Council has found as follows:

A. Granting this municipal use master site plan subject to the approved conditions will not be materially detrimental to the public safety or welfare.

- 1. There will not be damage or nuisance arising from noise, smoke, odor, dust, and vibration.*

The proposed well, well pump, hydro tank, and related equipment will be entirely contained within an 8-foot wall. The facility will not create damage, nuisances, or negative impacts on adjacent residential areas. Noise, smoke, odor, dust, and vibration are not anticipated to be a factor associated with this project.

- 2. There will not be impact on surrounding areas resulting from an unusual volume or character of traffic.*

Traffic generated by the proposed well will be low, estimated to be only about 1 to 2 service vehicles per week. Vehicle access will be from Scottsdale Road, approximately 350 feet north of Princess Drive.

- 3. There are no other factors associated with this project that will be materially detrimental to the public.*

No other factors are known to be materially detrimental to neighbors or the public.

B. The characteristics of the proposed municipal uses are reasonably compatible with the types of uses permitted in the surrounding areas.

The proposed well will not create land use conflicts with surrounding properties. The site is compatible with the adjacent use of properties.

Community involvement.

The applicant has been in contact with the Scottsdale Princess Resort regarding the improvements associated with the proposed well. City staff has sent postcards to all property owners within 300 feet of the site. There have been no public comments regarding this case at the time of preparing this report.

**STAFF
RECOMMENDATION**

Recommended Approach:

Staff recommends approval, subject to the attached stipulations.

Planning Commission:

The Planning Commission heard this case on January 22, 2003. No one from the public spoke in regards to the case. Commissioner Steinberg asked if the enclosure encroachment would get worse when the Scottsdale Road widening project happened. Staff indicated that the 100-foot scenic corridor starts at the right-of-way line, the expansion will occur within the existing right-of-way. He also asked if there are any development proposals adjacent to the site. Staff stated there are no plans or leases being talked about on the adjacent State Land parcels.

The Planning Commission recommends approval, 7-0.

**RESPONSIBLE
DEPT(S)**

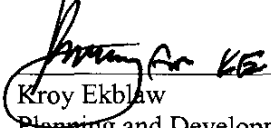
Planning and Development Services Department
Current Planning Services

STAFF CONTACT(S)

Bill Verschuren
Senior Planner
480-312-7734
E-mail:
bverschuren@ScottsdaleAZ.gov

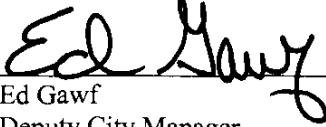
Randy Grant
Chief Planning Officer
480-312-7795
E-mail: rgrant@ScottsdaleAZ.gov

APPROVED BY


Kroy Ekblaw
Planning and Development Services General Manager

4/2/03

Date

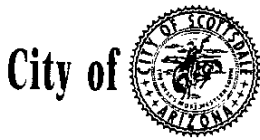

Ed Gawf
Deputy City Manager

4/2/03

Date

ATTACHMENTS

1. Applicant's Narrative
2. Context Aerial
- 2A. Aerial Close-Up
3. Land Use Map
4. Zoning Map
5. Stipulations
6. Additional Information
7. Traffic Impact Summary
8. Citizen Involvement
9. January 22, 2003 Planning Commission Minutes
10. Landscape Plan
11. Detailed Site Plan
12. Context Site and Aerial Plan



City of **Scottsdale**

PROJECT NARRATIVE FOR CITY INITIATED PROJECTS



- ☐ Rezoning ☐ Other
- ☒ Use Permit
- ☐ Development Review
- ☐ Master Sign Programs
- ☐ Text Amendment

Case # _____ / 202 -PA- 2002

Project Name Well No. 123

Location Scottsdale Road and E. Princess Boulevard

Applicant Larry Leischner

Ordinance Section _____

SITE DETAILS

Proposed Zoning: _____

Existing Zoning: 0-S

Parcel Size: 0.17 acres

Height: -

Parking Required: 0

Parking Provided: 0

Of Buildings: 0

Setbacks: N- _____ S- _____

E- 4' W- _____

In the following space, please describe the project or the request

Well No. 123 will pump directly into the City's water treatment plant. Site improvements will consist of a perimeter wall, well pump, and associated piping and valves. The well pump and motor will be enclosed and a separate enclosure will house electrical panels. All structures and enclosures will be elevated above the level of the 100 year flood. No on-site retention will be provided. The architectural components consist of an 8' high, stuccoed perimeter wall, a decorative entry feature and an enhanced vehicle gate. The finishes for the elements will closely match the colors and textures of the adjacent Princess Resort. The pilasters will be veneered with honed cmu veneer tile varying in size from 16" x 16" to 4" x 8". These veneer tiles will be installed in a random ashlar pattern similar to the adjacent Princess Resort monument. The vehicular entry will incorporate a stuccoed screen wall, anchored by veneered pilasters at each end. The screen wall will have a scrolled top to again respond to the wall detail of the adjacent Princess Resort. The rolling vehicular gate will be designed to follow the City of Scottsdale standard gate design with a decorative relief added to the face of the gate to respond to the enhanced character of the pump station enclosure walls.

202-PA-2002#2

10/2/2002

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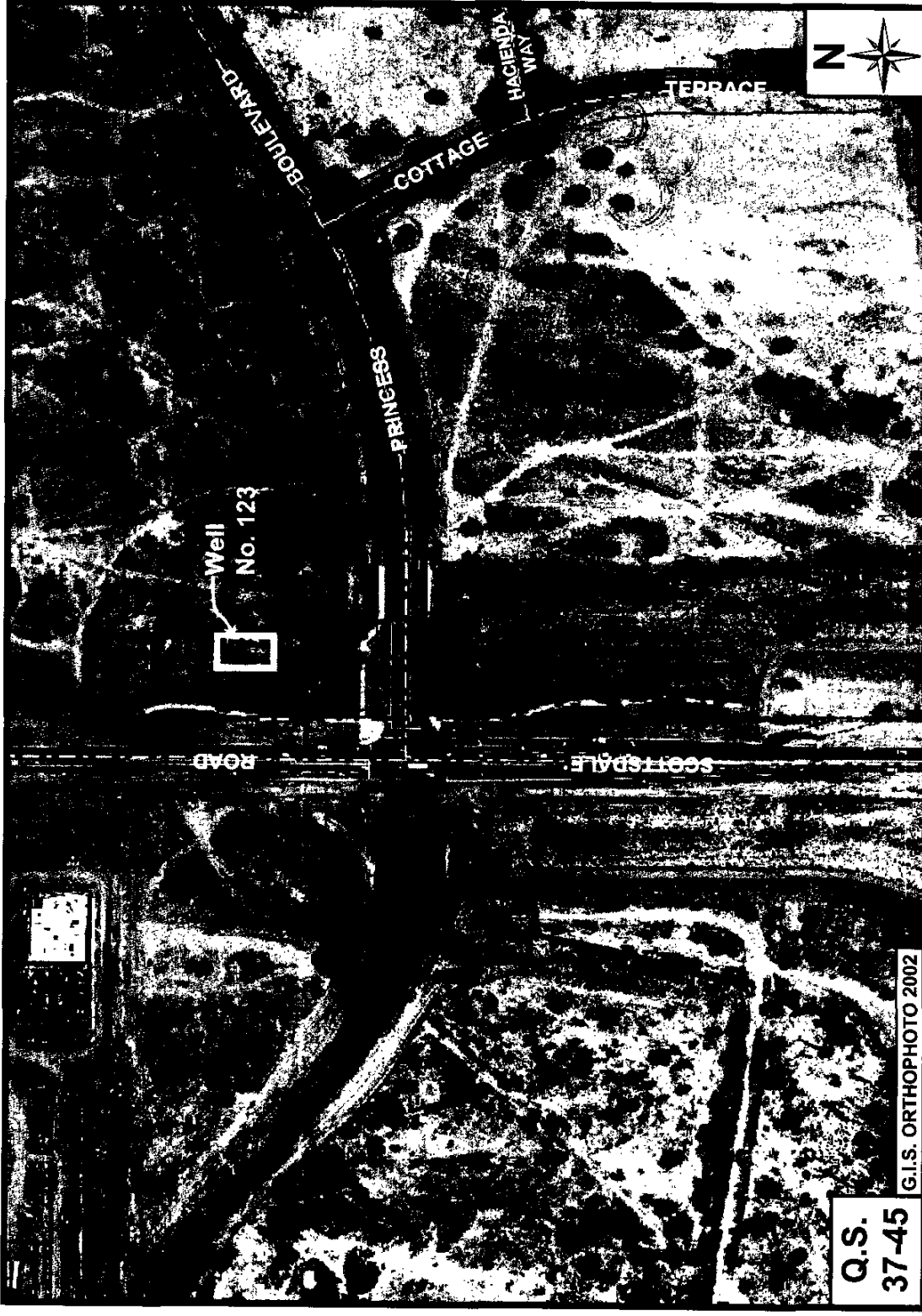
ATTACHMENT #1



25-UP-2002

City of Scottsdale Well No. 123

ATTACHMENT #2

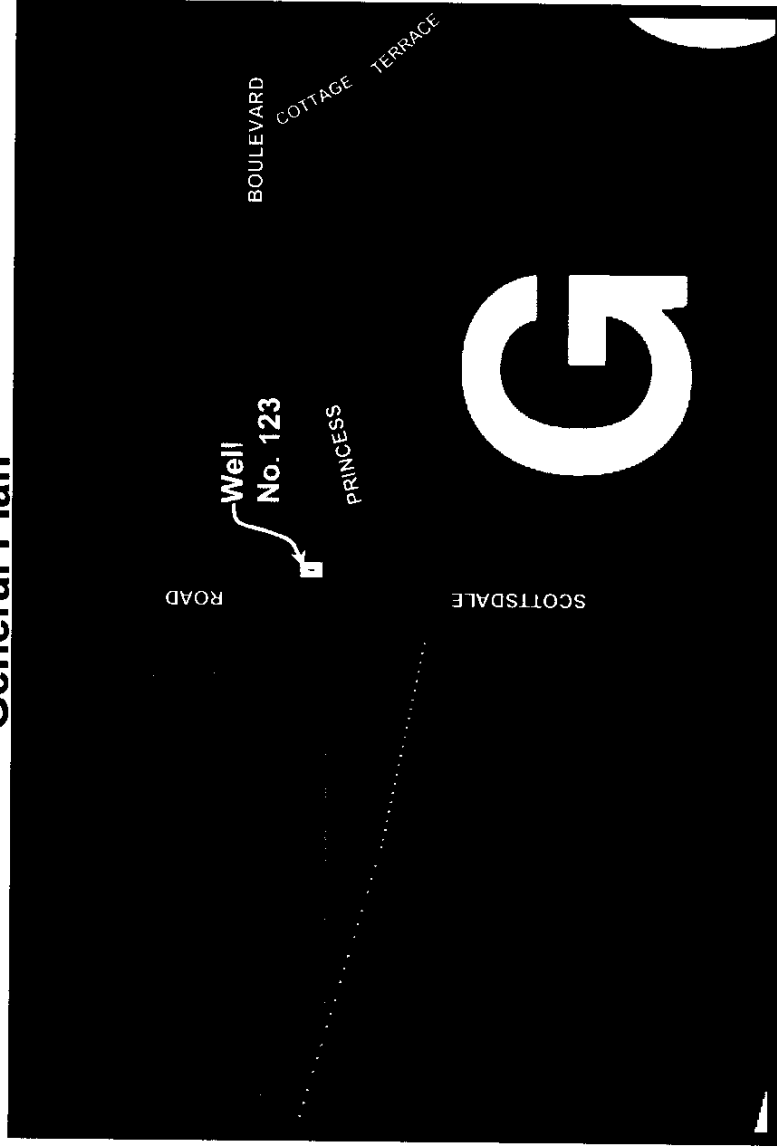


City of Scottsdale Well No. 123

25-UP-2002

ATTACHMENT #2A

General Plan

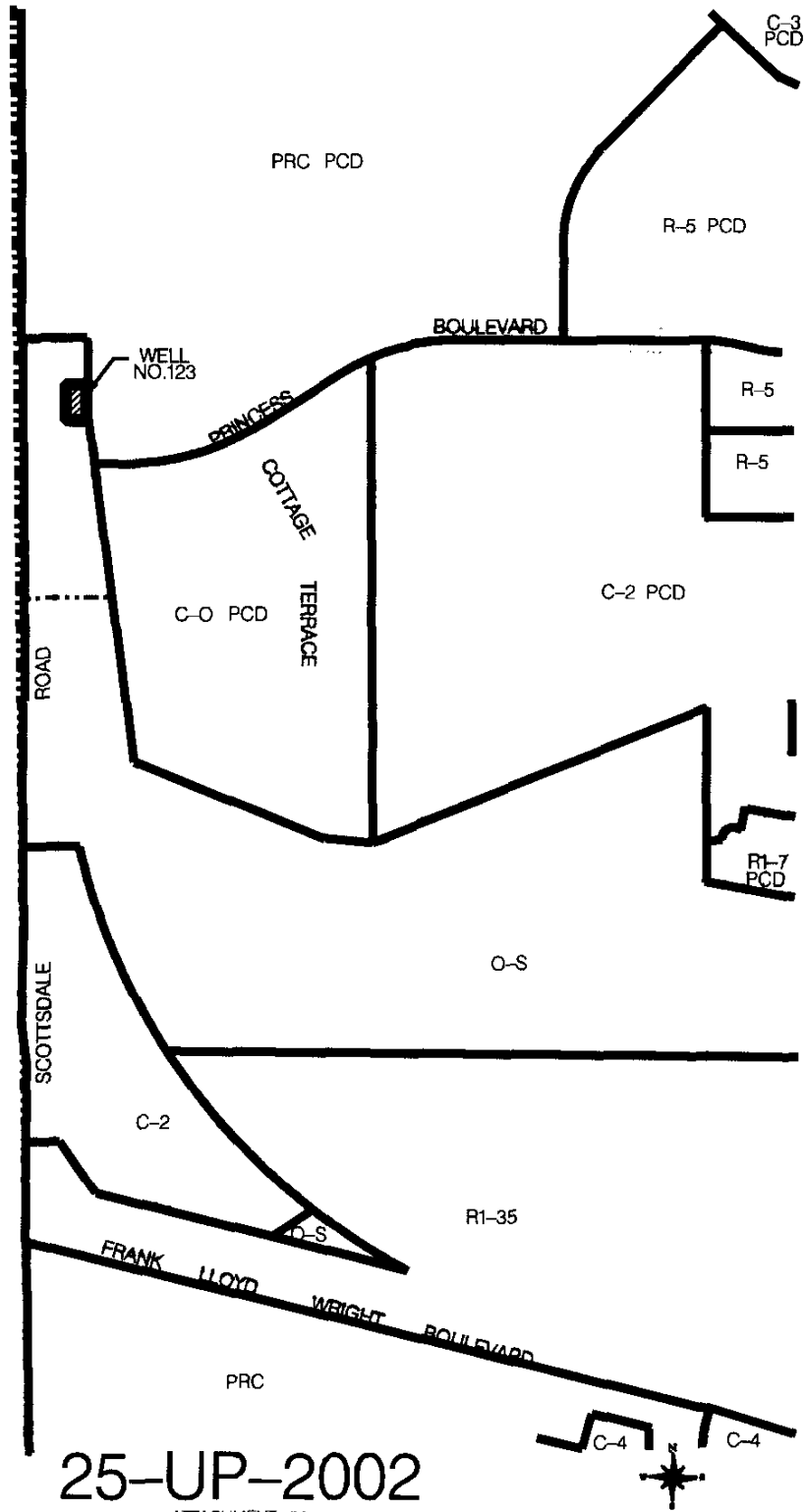


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|--|---|--|--|
| | Rural Neighborhoods | | Commercial |
| | Suburban Neighborhoods | | Office |
| | Urban Neighborhoods | | Employment |
| | Mixed-Use Neighborhoods | | Natural Open Space |
| | Resorts/Tourism | | Developed Open Space (Parts) |
| | Shea Corridor | | Developed Open Space (Golf Courses) |
| | Mayo Support District | | Cultural/Institutional or Public Use |
| | Regional Use District | | State Trust Lands under State Land Commissioner's Order #078-2001/2002 |
| | McDowell Sonoran Preserve (as of 3 /2002) | | |
| | Recommended Study Boundary of the McDowell Sonoran Preserve | | |
| | | | |



25-UP-2002
ATTACHMENT #3

CITY
OF
PHOENIX



STIPULATIONS FOR CASE 25-UP-2002

PLANNING/ DEVELOPMENT

1. **CONFORMANCE TO DEVELOPMENT SUBMITTAL.** Development shall conform with the site plan submitted by City of Scottsdale Municipal Services Department and dated June 2002. These stipulations take precedence over the above-referenced site plan. Any proposed significant change, as determined by the Zoning Administrator, shall be subject to subsequent public hearings before the Planning Commission and City Council.
2. **SCENIC CORRIDORS.** The scenic corridor width along Scottsdale Road, north of E. Princess Blvd., shall be a minimum of 60 feet and an average of 100 feet, measured from the outside edge of the street right-of-way. The landscaping in the scenic corridor shall be in accordance with the Landscape Plan (dated July 2002) approved by the Development Review Board on August 22, 2002.

CIRCULATION

1. **SITE PLAN.** The entire site shall be designed and constructed to accommodate a future 75-foot right-of-way on Scottsdale Road. The existing right-of-way on Scottsdale Road is 65 feet. The driveway connection from the well site to Scottsdale Road shall be perpendicular to the future right-of-way line so that the driveway will not be disturbed or require modifications when Scottsdale Road becomes fully improved.
2. **AUXILIARY LANE.** There shall not be a right-turn deceleration lane on Scottsdale Road at the site driveway.

DRAINAGE AND FLOOD CONTROL

1. **CONCEPTUAL DRAINAGE REPORT.** With the Development Review Board submittal, a Preliminary Drainage Report was submitted and accepted in concept by the City's Current Planning Services Department. The Preliminary Drainage Report was prepared by Stanley Consultants, Inc., and is dated June 2002.
2. **STORM WATER STORAGE REQUIREMENT.** The onsite disturbed drainage area is less than one-half acre. Full stormwater storage is not required, but post-developed flows shall not exceed pre-development flows.
3. **DRAINAGE EASEMENTS.** Before the issuance of any building permit for the site, the developer shall dedicate to the City, in conformance with the Scottsdale Revised Code and the Design Standards and Policies Manual, all drainage easements necessary to serve the site.

ADDITIONAL INFORMATION FOR CASE 25-UP-2002

PLANNING/DEVELOPMENT

1. **DEVELOPMENT CONTINGENCIES.** The approved development program, including intensity, may be changed due to drainage issues, topography, NAOS requirements, and other site planning concerns which will need to be resolved at the time of preliminary plat or site plan approval. Appropriate design solutions to these constraints may preclude achievement of the proposed development program.
2. **DEVELOPMENT REVIEW BOARD.** The City Council directs the Development Review Board's attention to:
 - a. wall design,
 - b. the type, height, design, and intensity of proposed lighting on the site, to ensure that it is compatible with the adjacent use,
 - c. scenic corridor
 - d. major stormwater management system,
3. **REVEGETATION OF SCENIC CORRIDORS.** The Development Review Board may approve revegetation of the Scenic Corridors.
4. **NATIVE PLANT PRESERVATION.** The owner shall secure a native plant permit as defined in the Scottsdale Revised Code for each parcel. City staff will work with the owner to designate the extent of the survey required within large areas of proposed undisturbed open space. Where excess plant material is anticipated, those plants shall be offered to the public at no cost to the owner in accordance with state law and permit procedure or may be offered for sale.

25-UP-2002

Traffic Impact Summary

conditional use permit

New City Well (BOR property)

Access direct to east side of Scottsdale Road, north of Princess Drive

Dec. 20, 2002

This new well site will access directly off the east side of Scottsdale Road, with a driveway located 300 feet north of Princess drive. Since the tract of land also fronts Princess Drive, normally a service drive would be located off that lesser street and not Scottsdale Road, a major arterial. Due to existing developed site conditions, landscaping, and the entry feature along Princess Drive, access to the well site is proposed from Scottsdale Road. The only anticipated site generated traffic will be approximately one municipal employee visit to the site per week.

Scottsdale Road will be reconstructed and expanded to six median divided lanes with a separate sidewalk by 2004. This project should be designed so that the entrance drive will be perpendicular to the widened Scottsdale Road, and so that all facilities are set back far enough to the east so as to not be in conflict with the new road and sidewalk. Due to the extremely low use of the driveway; a deceleration lane is not required along existing and proposed Scottsdale Road.

Relative to the conditional use permit traffic criterion, this well site will not have a negative impact on the surrounding area caused by an unusual volume or character of traffic.



Stanley Consultants INC.

A Stanley Group Company
Engineering, Environmental and Construction Services - Worldwide

October 3, 2002

Dr. Walter Brown
Paradise Valley Unified School District 69
15002 North 32nd Street
Phoenix, Arizona 85032

Subject: City of Scottsdale
Well No. 123, City Project No. W4708
School Notification

Dear Dr. Brown:

The City of Scottsdale is constructing a new well pumping facility at the northeast corner of Scottsdale Road and East Princess Boulevard for the referenced project. Stanley Consultants is the design engineer for the facility and has submitted a Use Permit application for the facility.

If there are any questions or you require additional information, please feel free to contact us.

Sincerely,

STANLEY CONSULTANTS, INC.

Larry Leischner, P.E.
Project Manager

c: Bill Verschuren, COS
Project Files (15789)



Memo

To: Stanley Consultants
From: Marshall Brown
Date: 6/21/02
Re: Community Input at Well Site Number123

Well 123 is located on United States Bureau of Reclamation (BOR) land intended to be included in a Recreational Land Use Agreement (RLA) with the City of Scottsdale. Until the RLA is finalized, or in the event that it is not finalized, BOR provided a series of letters granting permission for the City to construct the well site and providing provisions to transfer the well site to the City if the RLA does not incorporate the applicable parcel. Richard Mellegard (BOR - Outdoor Recreation Planner) has seen the preliminary site layout and verbally reaffirmed (multiple times) BOR approval of the well installation. Tom Beat (City of Scottsdale - Parks) is acting as the primary liaison with BOR for the RLA and the well. BOR would like to see engineering design plans when they reach the 90% stage.

The only current nearby land use is for the Scottsdale Princess Resort (Princess). The Princess is currently working on an agreement (Princess Wall Agreement) with the City of Scottsdale for improvements, including landscaping and a decorative wall, on the same parcel of land containing the wells site. I have been in personal telephone communication with Bob Ducey (Princess Engineering Director) and Bill Bielecki (Princess Assistant Engineering Director) regarding the improvements associated with our well site multiple times including January 28, 2002 and June 17, 2002. Princess is aware of the planned well site and has expressed a desire to work with the City late in the planning process in order to assure ascetic appearance of the final structures. Princess would also like to review the engineering design and provide input at the 90% stage.

202-PA-2002#2
10/2/2002

Case# 202-PA-2002 #2
09/11/02

CONTINUANCES


3. 16-UP-1997#2 (Danny's Car Wash - Shea) request by Deutsch Associates, applicant, Pinnacle & Pima LLC, owner for amend an existing use permit for an automated carwash on a 2.5+/- acre parcel located at 7373 E Shea Boulevard with Central Business District (C-2) zoning. Staff contact person is Bill Verschuren, 480-312-7734. **Continued to February 11, 2003.**
4. 17-UP-1997#2 (Danny's Car Wash - Shea) request by Deutsch Associates, applicant, Pinnacle & Pima LLC, owner for amend an existing use permit for a service station on a 2.5+/- acre parcel located at 7373 E Shea Boulevard with Central Business District (C-2) zoning. Staff contact person is Bill Verschuren, 480-312-7734. **Continued to February 11, 2003.**

(CHAIRMAN GULINO DECLARED A CONFLICT ON CASES 16-UP-1997#2 AND 17-UP-1997#2 AND DID NOT PARTICIPATE IN THE VOTE.)

COMMISSIONER HEITEL MOVED TO CONTINUE CASES 16-UP-1997#2 AND 17-UP-1997#2 TO THE FEBRUARY 11, 2003 PLANNING COMMISSION MEETING. SECOND BY COMMISSIONER OSTERMAN.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0) WITH CHAIRMAN GULINO ABSTAINING.

EXPEDITED AGENDA

- 
5. 25-UP-2002 (City of Scottsdale Well No. 123) request by Stanley Consultants Inc., applicant, City of Scottsdale, owner, for a conditional use permit for a city well (municipal use) on a .17 +/- acre parcel located at the northeast corner of Scottsdale Road and East Princess Boulevard with Open Space (OS) zoning.

MR. VERSCHUREN presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER STEINBERG stated the report states under Policy implications: "The front 27 feet of the 60-foot wide well enclosure encroaches into the 100-foot scenic corridor along Scottsdale Road". He inquired what will happen when they widen the Scottsdale Road portion between Frank Lloyd Wright and Pinnacle Peak will that encroachment get worse. Mr. Verschuren replied the 100-foot scenic corridor starts at the right-of-way line so the right-of-way they are expanding in already exists.

Commissioner Steinberg inquired if there was any proposed use for immediately around the proposed well site. Mr. Verschuren stated the site is in open space. Mr. Jones stated there are no plans or no leases being talked about on the State Land parcel.

COMMISSIONER HENRY stated she would like to clarify that the owner of the well site is the City of Scottsdale. Mr. Verschuren replied in the affirmative.

CHAIRMAN GULINO stated he would like to include in the packet to the DR Board that they pay attention to the height of the equipment in the well relative to the effectiveness of the wall to screen it.



VICE CHAIRMAN LOTZAR MOVED TO FORWARD CASE 25-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET ALL OF THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER HEITEL.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

9-AB-2002 (Boulder Mountain Estates/Mills Property) request by Maracay Homes Arizona LLC, applicant, Multiple Owners, owner, to abandon certain portions of the roadway easements located along 116th and 118th Street alignments and Ranch Gate Road alignment.

(VICE CHAIRMAN LOTZAR DECLARED A CONFLICT ON CASE 9-AB-2002 AND DID NOT PARTICIPATE IN THE DISCUSSION OR THE VOTE.)

MS. SUMNERS presented this case as per the project coordination packet. Staff recommends approval, subject to the requirements for street dedications along 118th Street and small portion along Ranch Gate Road as well as a public trail easement along the east side of 118th Street.

COMMISSIONER HEITEL inquired if the DR Board expanded that trail easement to 25 feet.

STEVEN VOSS, 7502 E. Main, stated it was expanded to 25 feet but only to be located on the east side.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 9-AB-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HENRY.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0) WITH VICE CHAIRMAN LOTZAR ABSTAINING.

10-AB-2002 (Health South Abandonment) request by Shane & Karen Mustoe, applicant, Multiple Owners, owner, to abandon 50 feet of public right-of-way east of 96th Street, north of Shea Blvd.

MR. DEELEY presented this case as per the project coordination packet. Staff recommends approval, subject to the following stipulations:

- A drainage easement is reserved over, under and across the west 15 feet of the subject 50 feet right-of-way.
- The property owners will be responsible to remove the valley gutter and replace with a rolled curb to eliminate the appearance of a public street.

*** NATIVE PLANT NOTE:**
 The City of Scottsdale Native Plant List is located on the City of Scottsdale website at www.scottsdaleaz.gov/planning/development/landscape/landscape_planning.htm.
 There will be no native plant material specified in this plan. All plant material shall be specified by the City of Scottsdale Native Plant List.

PLANT SCHEDULE

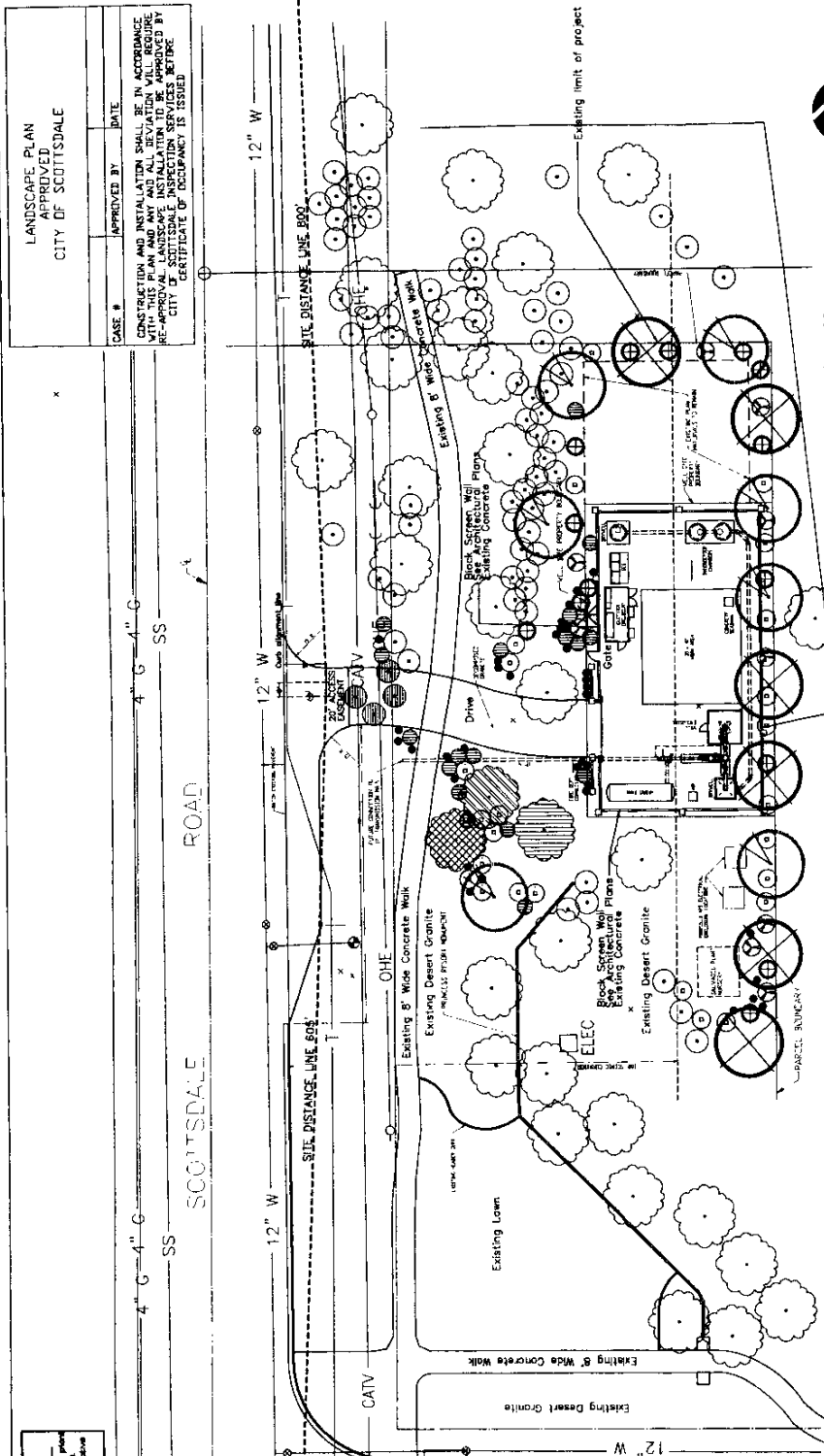
SYMBOL	PLANT NAME	SIZE	QUANTITY	REMARKS
(Tree)	Prosopis juliflora	2 1/2" DBH	1	Native Plant
(Shrub)	Prosopis juliflora	5' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	8' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	10' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	12' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	14' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	16' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	18' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	20' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	22' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	24' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	26' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	28' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	30' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	32' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	34' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	36' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	38' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	40' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	42' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	44' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	46' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	48' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	50' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	52' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	54' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	56' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	58' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	60' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	62' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	64' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	66' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	68' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	70' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	72' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	74' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	76' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	78' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	80' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	82' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	84' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	86' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	88' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	90' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	92' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	94' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	96' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	98' DBH	1	Native Plant
(Shrub)	Prosopis juliflora	100' DBH	1	Native Plant

LANDSCAPE MATERIALS

- 1. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 2. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 3. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 4. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
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- 11. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 12. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 13. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 14. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 15. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 16. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 17. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 18. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 19. All landscape materials shall be specified by the City of Scottsdale Native Plant List.
- 20. All landscape materials shall be specified by the City of Scottsdale Native Plant List.

CITY OF SCOTTSDALE LANDSCAPE NOTES:

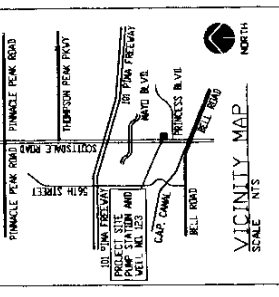
1. Areas of landscaped ground shall not be landscaped and shall not exceed dimensions of more than 7 feet in any one direction.
2. Upon removal of the landscaped ground, the contractor shall install a concrete base for the landscaped ground.
3. The landscaped ground shall be landscaped with the City of Scottsdale Native Plant List.
4. The landscaped ground shall be landscaped with the City of Scottsdale Native Plant List.
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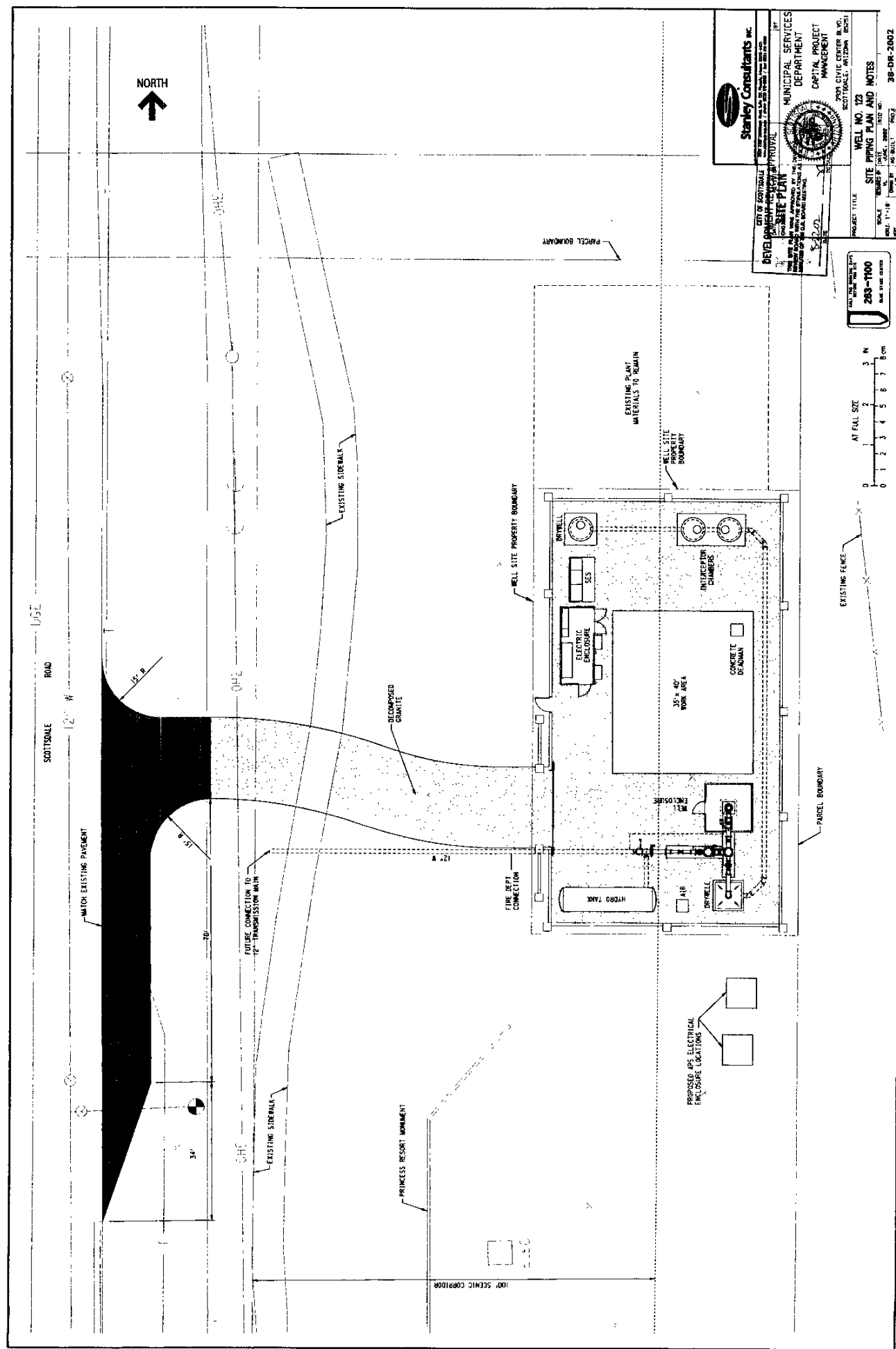
LANDSCAPE PLAN

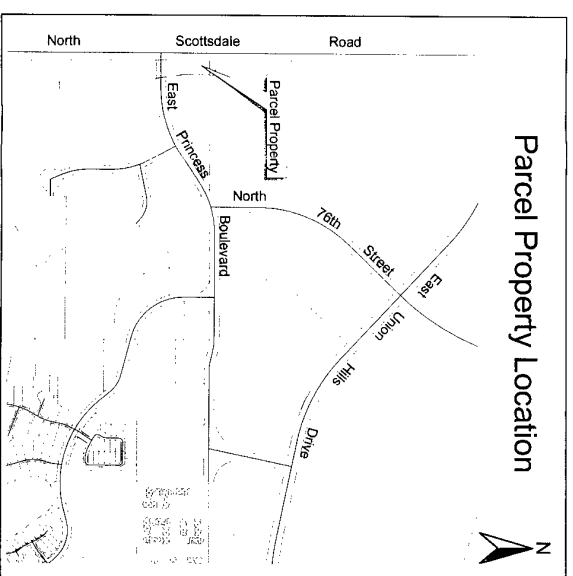
SCALE: 1" = 20'-0"
 GRAPHIC SCALE: 0' 20' 40'

PRELIMINARY ISSUE FOR REVIEW
 NOT FOR CONSTRUCTION JULY 2002



Stanley Consultants Inc.
 DEVELOPMENT REVIEW BOARD
 LANDSCAPING PLAN
 PROJECT: CAPITAL PROJECT
 SHEET: 123
 DATE: 07/26/2002
 REVISION: LANDSCAPING



[illegible]

LEGEND

Existing Plant Materials To Remain

Parcel Boundaries

1. 500 Foot Radius From Site Represented by Circle.



Stanley Consultants INC



CITY COUNCIL REPORT

MEETING DATE: 4/15/03

ITEM NO.

6

GOAL: Transportation

SUBJECT

Contract with Qwest Corporation for a dedicated telephone line that provides the telephone communication link between the AZTech Partners, Arizona Department of Transportation (ADOT), and the Scottsdale Intelligent Transportation System. The link provides for sharing of freeway and local data.

REQUEST

Consider approval of Contract No. 2003-051-COS with Qwest Corporation, for \$23,416 per year, and increase the proposed budget for traffic signal lines in fiscal year 2003/04 by \$23,500 to cover the added expense. No additional budget is required for fiscal year 2003/04 for period of service April through June 2003.

The service cost is based on a 1-year contract. The sole source contract cost will be renegotiated each year, and brought to City Council for consideration.

The leased telephone line from Qwest was installed in 1998 as a result of the AZTech Model Deployment Initiative. AZTech had the goal of connecting all of the Valley Traffic Management Centers, creating a region traffic system that provided closed circuit TV (CCTV) linkage, variable message sign control and traffic signal control from any of the AZTech Partners. AZTech's objective was to create enhanced traffic management systems to increase safety and improve regional mobility.

City Council, by Resolution No. 4994, approved the AZTech Intergovernmental Agreement in February 1998. The first 36 months service of the initial dedicated phone line was paid for by the AZTech Project. Subsequently, Maricopa County funded an additional 24 months. The County is now requiring the City and other municipalities that participate in AZTech to assume payment for communication links, as initially envisioned at Project startup. Responsibility for the phone service will change on March 28, 2003.

Related Policies, References:

Procurement Code; Resolution No. 4994, February 17, 1998; City Code, Chapter 17-21: Cooperate with other City officials in the development of ways and means to improve traffic conditions.

BACKGROUND

In 1998, the US Department of Transportation allocated \$7.5 million to the Phoenix area to accomplish a program through State, city and private sector partnerships known as the "AZTech Project." The AZTech Project's purpose was to implement an integrated Regional Advanced Traveler Information System. AZTech was intended to demonstrate the operation of intelligent transportation systems throughout the Phoenix metropolitan area.

The initial provider of video and data communications for the AZTech program was US West Communications, the precursor of Qwest, the firm selected by project planners. The 1998 Intergovernmental Agreement stated that after 36 months, Scottsdale agreed to be responsible for the cost.

Scottsdale currently has a computer station in the Traffic Management Center located in One Civic Center that is the AZTech server. The server has direct communications with all AZTech Partners utilizing this communication link, including Tempe, Mesa, Phoenix and ADOT. The computer station allows for sharing of regional traffic incident maps, CCTV camera images, and other ITS devices, allowing signal and traffic coordination across jurisdictional boundaries. Communication is via the dedicated Qwest phone line.

ANALYSIS & ASSESSMENT

Recent staff action.

Traffic Engineering staff continues to explore options to eliminate the need for a dedicated phone line, including City-owned fiber to the ADOT Traffic Operations Center, sharing ADOT-owned fiber on the 101 Freeway, or wireless communications. However, each of the options is two to five years out.

Community involvement.

There will be no physical work completed under this contract that would delay Scottsdale motorists.

RESOURCE IMPACTS

Available funding.

Funds are available in Operating Account No. 200-04305-52224 (Intelligent Transportation System Traffic Signal Lines) for the remainder of fiscal year 2002/03. Until the Qwest 1-year agreement is signed, the connection is being maintained on a month-to-month non-contract rate of \$2054.00 per month effective March 28, 2003.

The proposed budget for fiscal year 2003/04 for 200-04305-52224 will need to be increased by \$23,500, to \$235,500. The County turnover of the Qwest contract was not anticipated at the time the proposed fiscal year 2003/04 departmental budget was formulated.

Staffing, workload impact.

There will be no workload impact on staff.

Maintenance requirements.

Maintenance requirements are covered under the Qwest contract. The equipment that is housed in the Scottsdale Traffic Management Center will continue to be maintained by the AZTech Project and Maricopa County.

Future budget implications.

City and Transportation Department policy is to enhance competition whenever feasible and practicable, to avoid sole source contracts. Local communication companies have been queried to see if a better price could be obtained. However, none of the queried companies have the infrastructure in place that could make a connection to the ADOT Traffic Operations Center. Staff will continue to explore any options that would be economically feasible.

The cost of the Qwest connection will continue to be approximately \$24,000 per year until a fiber or wireless communication link can be established with ADOT.

**OPTIONS & STAFF
RECOMMENDATION****Option 1:**

Award the Qwest contract.

Option 2:

Do not award the Qwest contract and allow the connection to be terminated. If the connection is terminated, Scottsdale will no longer be an AZTech Partner, and no traffic video or data will be shared with other municipalities. This will result in poor cross-jurisdictional signal timing, and limit the coordination of traffic between Scottsdale and ADOT, Tempe, Phoenix and Mesa. This will also preclude the use of the "Amber Alert" when the program is adopted by the State of Arizona. The Amber Alert plan includes sharing Variable Message Signs, utilizing the AZTech Server connection, to allow ADOT or other public safety officials to post Amber Alert messages on all available Variable Message Signs in Maricopa County.

**OPTIONS & STAFF
RECOMMENDATION****Recommended Approach:**

Approval of the contract with QWest is recommended by the Traffic Engineering staff to continue cross-jurisdictional ITS communications with ADOT, Tempe, Phoenix and Mesa.

Proposed Next Steps:

If this request is approved, the Qwest contract will be signed and the communication connection maintained.

RESPONSIBLE DEPT(S)

Transportation Department, Traffic Engineering Division

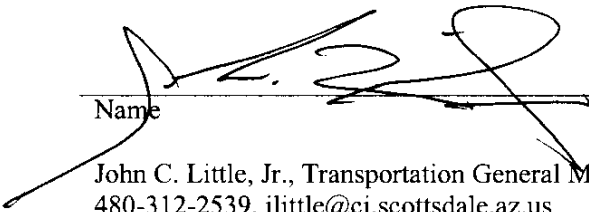
STAFF CONTACTS

Bruce Dressel, ITS Analyst, 480-312-2358, bdressel@ci.scottsdale.az.us

APPROVED BY

Name


Date


John C. Little, Jr., Transportation General Manager,
480-312-2539, jlittle@ci.scottsdale.az.us

3-27-03

Name

Date


Ed Gawf, Deputy City Manager,
480-312-4510, egawf@ci.scottsdale.az.us

3/31/03

ATTACHMENTS

1. Contract #2003-051-03 - Qwest Service Fixed Period Pricing Plan
2. Resolution No. 4994, February 17, 1998

**QWEST ATM SERVICE
FIXED PERIOD PRICING PLAN
Interstate**

This is an agreement between **City of Scottsdale** ("Customer") and **Qwest Corporation** ("Qwest") for the provision of Asynchronous Transfer Mode Service ("ATM Service" or "Service") as defined herein ("Agreement").

1. SCOPE.

1.1. QWEST ATM Service is a broadband network transport service that provides a faster, more efficient way to electronically move large quantities of information over a highly reliable, scalable, secure fiber optic ATM network with Quality of Service ("QoS") guarantees. ATM Service is designed to support many different applications, e.g., data, video, and voice, within an enterprise network, treating each application based on its bandwidth requirements.

1.2. ATM Service uses high speed Asynchronous Transfer Mode ("ATM") networking technology to bundle information into fixed segments called cells. Information is shared among multiple locations via dedicated physical links and Virtual Channel Connections ("VCC"s) or Virtual Path Connections ("VPC"s). Service supports a full range of speeds from 1.544 Mbps to 622 Mbps. Under this Agreement, Service will be provided at (12 Mbps) Mbps and, subject to Section 5, below, may be increased by Customer upon reasonable notice by Customer to Qwest.

1.3. Service requires the use of customer equipment that functions as a router, hub, or ATM switch. This terminal equipment must be purchased separately from the Service and must conform to industry ATM standards. The customer equipment accumulates customer information and puts it into a cell format suitable for transmission over the Qwest ATM network.

1.4. Qwest will provide Service in accordance with Qwest's Federal Communications Commission ("F.C.C.") Access Tariff No. 1 which is incorporated herein by this reference, and shall be hereinafter referred to as "Tariff". In the event of a conflict between the terms and conditions of this Agreement and the Tariff, the Tariff will prevail.

1.5. Service provided herein may be subject to network infrastructure availability which includes, but not limited to, facilities such as transmission lines and switching equipment and may require the expenditure of Qwest capital funds ("Funding") to provide Service to Customer. Notwithstanding the above, Qwest shall not be compelled under this Agreement to provide Service in locations where adequate network infrastructure does not exist without Funding approval as evidenced on the signature page of this Agreement. Such approval shall be granted at the sole discretion of Qwest. In the event this Agreement is executed and the required Funding is not approved, Qwest agrees to cooperate with Customer in good faith to develop an alternative service solution and may terminate this Agreement immediately without penalty.

2. TERM.

2.1. This Agreement is effective on the latest signature date and expires twelve (12) months from the date Service is available to Customer under this Agreement, as evidenced by Qwest records ("Term").

2.2. If Qwest continues to provide Service after this Term without a further Agreement, the provisions for month-to-month service in the Tariff will apply.

3. INSTALLATION/LOCATION(S).

3.1. Qwest's records will document the actual date of installation at the following Customer address location(s):

No.	Service Address including City and ST
1	7447 E Indian School Rd Scottsdale, AZ

3.2. Qwest shall notify Customer of the date Service ordered is available to Customer under this Agreement. In the event Customer is unable or unwilling to accept service at such time, the subject Service will be held available for Customer for a period not to exceed thirty (30) business days from such date ("Grace Period"). If after this Grace Period, Customer still has not accepted service Qwest may, at its sole discretion, after consultation with Customer either: (i) commence with regular monthly billing for the subject Service; or, (ii) terminate the subject Service and invoice Customer for any applicable cancellation charges pursuant to Section 6 which shall include the full non-recurring installation charges that would have otherwise applied.

4. CHARGES AND BILLING.

4.1. Service's monthly rate and nonrecurring charge shall be those in effect in the Tariff on: 1) the first date of installation for new Service, or 2) the latest signature date for existing Service. Qwest shall protect the monthly rate from any Qwest initiated price increases during the term of this Agreement. Any rate increases directed or mandated by a regulatory body with proper authority shall increase rate pursuant to the order regarding such increases. The charges specified herein do not include applicable taxes imposed by law. Customer shall pay Qwest all applicable taxes, usual and customary surcharges and all government imposed fees and charges that relate to the Service or installation rendered hereunder. Customer shall pay each bill in full by the payment due date stated on each bill. Where permitted by law, late payment charges shall be assessed according to Tariff or law. The charges for Services under this Agreement, including any and all discounts to which Customer may be entitled, will be offered and charged to Customer independently from and regardless of the Customer's purchase of any customer premises equipment or enhanced services from Qwest.

4.2. Customer will pay the following charges for Service:

Total Monthly Recurring Charge	\$ 1,951.30
Total Nonrecurring Charge	\$ 0.00

Promotional Pricing: ☐ Yes ☒ No Promotion Expiration Date: _____
Promotion Description, Title, or Code: _____

5. **CHANGES TO SERVICE.** Customer may increase the speed at which Service is provided to another speed at which Qwest provides the Service and/or change the physical location of all or part of Service to another location within the same Qwest intrastate intraLATA serving area, provided Service is available at the speed(s) and location(s) requested, and will be provided under the terms and conditions of the Tariff. Any change to the Service provided under this Section 5 will be subject to Qwest's then-current rates for the new Service and the Total Monthly Recurring Charge and/or Total Nonrecurring Charge shall be adjusted in accordance with such rates.

6. TERMINATION.

6.1. Either party may terminate this Agreement for cause provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party, and such cause is not corrected within that thirty (30) day period. Cause is any material breach of the terms of this Agreement. If Qwest terminates this Agreement for cause or if Customer terminates this Agreement in whole or in part WITHOUT cause, Customer shall pay early termination charges. If such termination is prior to the start of Service by Customer and after execution of this Agreement, early termination charges shall be those reasonable expenses incurred by Qwest through the date of termination including, but not limited to, the standard installation charges for the subject Service excluding any waivers or promotions extended to Customer based on its completion of the full Term.

6.2. The Minimum Billing Level for ATM Service is 100% of the monthly rates for the Service elements being discontinued under the Customer's Agreement except the Cell Transfer Service elements. The Cell Transfer Service elements consist of the port speed and the bandwidth increments. The Minimum Billing Level for the Cell Transfer Service elements is 100% of the Cell Transfer Fixed monthly rate (port speed) and the monthly rate for a Peak Cell Rate ("PCR"), Sustained Cell Rate ("SCR"), or Unspecified Bit Rate ("UBR"). Incremental Cell Transfer of 64kbps of bandwidth on a 1.544Mbps port, 5Mbps of bandwidth on a 45Mbps port, or 15Mbps of bandwidth on a 155Mbps port is based on the Customer's existing Agreement and the speed of the associated port. When Customer adds to an existing agreement, the Minimum Billing Level increases accordingly.

6.3. If, during the Minimum Service Period of 12 months, Customer disconnects all or part of Service, Customer shall pay termination charges. The termination charge is 100% of the Minimum Billing Levels

(as set forth in 6.2 preceding) for the months remaining in the Minimum Service Period. In addition, Customer shall pay 40% of the Minimum Billing Levels for the remaining portion of the Agreement.

6.4. If, after the Minimum Service Period, Customer disconnects all or part of Service, the Customer shall pay 40% of the Minimum Billing Levels (as set forth in 6.2., preceding) for the remaining portion of the Agreement.

6.5. In addition, Customer shall pay the balance of all billed but unpaid recurring and all outstanding nonrecurring charges.

6.6. A termination charge will be waived when all of the following conditions are met: 1) the customer discontinues their contracted service(s) and signs a new service agreement(s) for any other Company provided service(s), 2) the new service agreement(s) have a total value equal to or greater than 115% of the remaining prorated value of the existing agreement(s) (excluding any special construction charges, applicable nonrecurring charges, or previously billed but unpaid recurring and/or nonrecurring charges) 3) the Customer places the orders to discontinue the service and establish new service at the same time, and 4) a new minimum service period goes into effect when the new service agreement term begins. New service is defined as a newly installed service placed under a new service agreement(s), or newly installed additions to an existing service agreement(s), but does not include renewals of expiring service agreement(s), renegotiations of existing service agreement(s) and conversions from month-to-month service to contracted service. The waiver does not apply to changes between regulated and unregulated products and services, nor to changes between enhanced and non-enhanced services.

7. PERSONAL INJURY; PROPERTY DAMAGE. Each party will be responsible for any actual, physical damages it directly causes in the course of its performance under this Agreement, limited to damages resulting from personal injuries, death, or property damage arising from negligent acts or omissions; PROVIDED, HOWEVER, THAT NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT.

8. LIMITATION OF LIABILITY. QWEST WILL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT. EXCEPT AS PROVIDED IN THIS AGREEMENT, ANY QWEST LIABILITY TO CUSTOMER FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT WILL NOT EXCEED, IN AMOUNT, A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT(S). REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

9. NO WARRANTIES. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. UNCONTROLLABLE CONDITIONS. Neither party will be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control.

11. DISPUTE RESOLUTION. Any dispute arising out of, or relating to, this Agreement which cannot be resolved by the parties will be settled by arbitration, which will be conducted in accordance with the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Arbitration Rules. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitration of the dispute. Either party may initiate arbitration by providing to JAMS a written demand for arbitration (with a copy to the other party), a copy of this Agreement and the administrative fee required by JAMS. The written demand for arbitration shall be sufficiently detailed to permit the other party to understand the claim(s) and identify witnesses and relevant documents. Except for the administrative fees required to commence the arbitration, or file any counterclaims, the costs of the arbitration, including arbitrators fees, shall be shared equally by the parties; provided, however, that each party shall bear the cost of preparing and presenting its own claims and/or defenses (including its own attorneys fees). The arbitration will be held in Denver, Colorado. The arbitrator has no authority to award any indirect, incidental, special, reliance, punitive, or consequential damages, including damages for lost profits. The arbitrator's decision shall follow the plain meaning of this Agreement and shall be final, binding, and enforceable in a court of competent jurisdiction. If either party fails to comply with the dispute resolution process set forth herein (including, without

limitation, nonpayment of an arbitration award) and a party is required to resort to court proceedings to enforce such compliance, then the non-complying party shall reimburse all of the costs and expenses incurred by the party requesting such enforcement (including reasonable attorneys fees). Nothing in this Section 11 shall prohibit either party from seeking injunctive relief in any applicable state or federal court.

12. LAWFULNESS. This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any agreement to that extent without further notice. The laws of the state where Service is provided shall govern this Agreement.

13. SEVERABILITY. In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of this Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

14. GENERAL PROVISIONS.

14.1. Failure or delay by either party to exercise any right, power, or privilege hereunder shall not operate as a waiver hereto.

14.2. This is a retail end user contract. It may be assigned only with the consent of Qwest. Customer may not assign to a reseller or a telecommunications carrier under any circumstances.

14.3. This Agreement benefits Customer and Qwest. There are no third party beneficiaries.

14.4. If a party returns this Agreement by facsimile machine, the signing party intends the copy of this authorized signature printed by the receiving facsimile machine to be its original signature.

14.5. This Agreement constitutes the entire understanding between Customer and Qwest with respect to Service provided herein and supersedes any prior agreements or understandings.

14.6. Neither party shall, without the prior written consent of the other party: (a) issue any press release or make any other public announcement regarding this Agreement or any relation between Customer and Qwest; or (b) use the name, trademarks, or other proprietary identifying symbol of the other party or its affiliates. Such consent by Qwest may be given only by the Executive Vice President of Corporate Communications or his or her designee. Any purported consent by any other person, including any Qwest sales or customer service representative, is void and of no effect.

15. EXECUTION. The parties hereby execute and authorize this Agreement as of the latest date shown below. Notices concerning this Agreement may be sent to Qwest's Customer billing address of record or to Customer's Address for Notices specified herein, if any.

Customer

Qwest Corporation

Authorized Signature

Authorized Signature

Name Typed or Printed

Sharon Sevy

Name Typed or Printed

Title

Sales Director, GES

Title

Date

Date

Address for Notices:

Address for Notices:

1801 California, Suite 3800

Denver, CO 80202

Attn: Vice President

Legal Affairs Department, Commercial Law

(FOR QWEST INTERNAL USE ONLY)

FUNDING CONCURRENCE REQUIRED PRIOR TO EXECUTION

Funding Approved By: N/A--Supercedure of existing service

Funding Approver's Name

AQCB Quote No. _____

Date Concurred: _____

RESOLUTION NO. 4994

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR THE PURPOSE OF OBTAINING GRANT MONEY ALLOCATED FROM THE UNITED STATES DEPARTMENT OF TRANSPORTATION AND PARTICIPATION IN THE AZTECH PROJECT.

WHEREAS, the Arizona Revised Statutes 11-951, et seq., provide that public agencies may enter into intergovernmental agreements for joint operation or cooperative action; and

WHEREAS, Section 3-1 of Article 1 of the Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies; and

WHEREAS, the City of Scottsdale desires to enter into an agreement with the State of Arizona to obtain its share of U.S. Department of Transportation funds and otherwise accomplish the purposes set forth above.

NOW THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:


Section 1. Sam Kathryn Campana, Mayor, is hereby authorized and directed to execute, on behalf of the City of Scottsdale, an agreement with the State of Arizona for the purpose of obtaining funds for transportation improvements and participation in the AZTECH Project.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this 17th day of February, 1998.

BY:


SAM KATHRYN CAMPANA, MAYOR

ATTEST:


Sonia Robertson, City Clerk

APPROVED AS TO FORM:

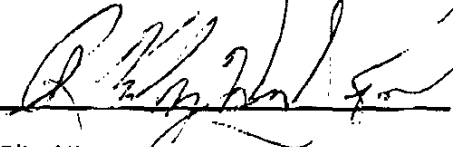

FREDDA BISMAN, City Attorney

JPA 97-89

APPROVAL OF THE CITY OF SCOTTSDALE ATTORNEY

I have reviewed the above referenced proposed Intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SCOTTSDALE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 4 day of February, 1998.



City Attorney

COS File: 980016 IGA
A. G. Contract No. KR97-1889-TRN
ADOT File: JPA 97-99
Project: H4450 01X
Section: AZTech Project:
Signal Synchronization

INTERGOVERNMENTAL AGREEMENT

FILE COPY

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SCOTTSDALE

THIS AGREEMENT is entered into 19 March 1998, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SCOTTSDALE, acting by and through its MAYOR AND CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401, and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572, and its Charter to enter into this agreement and has by resolution agreed to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. The US Department of Transportation has allocated \$7,500,000.00 to the metropolitan Phoenix area to be administered by the State and Maricopa County to accomplish the program via a State, City and private sector partnership known as the "AZTech Project", for the expressed purpose of implementing an Integrated Regional Advanced Traveler Information System, and demonstrate Intelligent transportation systems throughout the area and involve State, City, regional and local jurisdictions
4. The AZTech concept is to integrate the existing intelligent transportation infrastructure into a regional system. The State with Maricopa County, regional and local jurisdictions, are jointly developing the AZTech Project to establish and implement an integrated traveler information system for the multimodal traveler. The Project will enhance the transportation management systems for the Phoenix metropolitan area by providing up-to-the-minute travel information and facilitate signal coordination across jurisdictional boundaries, thereby providing increased safety and improved regional mobility.
5. The State and City are working together with other AZTech Project partners in a common goal of coordinating traffic management systems in direct consideration of a regional transportation system.

NO. 22252
Filed with the Secretary of State
Date Filed: 03/19/98

Letecy Boulton
Secretary of State

By: Vicky Greenwood

6. The State and the City have identified potential areas where Intelligent Transportation System (ITS) technology can be applied to improve traffic management and establish a Traffic Traveler Information System in the valley for the AZTech Project. The intent of this agreement is to define the terms of the parties with regard to respective responsibilities related to the SMART Corridors Instrumentation, (defined as "a systematically managed roadway, utilized at maximum efficiency.") The term of the AZTech Project is 5 years.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE

1. The City will:

a. Provide representatives to the AZTech Project committees and working groups. Allow for and assist in the communication between the Traffic Operation Centers (TOCs). Allow timely access to the City's traffic system data bases. Participate in the development and implementation of a system evaluation plan. Participate in the development and implementation of multi-jurisdictional signal system timing plans and establish inter-operability between City, State and other local jurisdictions. Participate in system training as required.

b. Be responsible for the design, construction assistance and maintenance of five (5) field detector stations, as well as provide ongoing operations support and maintenance for the five (5) year duration of the AZTech Project. The stations all monitor traffic on or approaching Scottsdale Road at the following locations. All costs (excluding maintenance) are reimbursable by the State.

1. Scottsdale Road South of Vista Drive
2. Scottsdale Road South of Double Tree Road
3. Scottsdale Road South of Thunderbird Road
4. Shea Boulevard West of Miller Road
5. Shea Boulevard East of 70th Street

c. Be responsible for, construction assistance and maintenance of a closed circuit television system at the southwest corner of the intersection of Scottsdale Road and Shea Boulevard. All costs for the closed circuit television system are reimbursable by the State, up to \$60,000.00.

d. Modify the City's existing traffic signal computer system in order to provide to AZTech traffic signal timing plan data, traffic count, occupancy and speed data, and event data.

e. Install the initial KIOSK at the State's expense, at an estimated cost of \$20,000.00 per KIOSK, at the location proposed by the City and agreed upon by the State. Provide ongoing operations support and maintenance for the five (5) year duration of the AZTech Project and be responsible for all costs beyond the initial expenditure by the State. Be responsible for additional KIOSKS at a fifty percent (50%) match, at an estimated cost of \$10,000.00 per KIOSK, at the location proposed by the City and agreed upon by the State, provided additional funding is available through the AZTech Project, should the City desire additional KIOSKS.

f. On a monthly basis, maintain and provide, to the State AZTech Project Administrator, on an approved format, an itemized accounting of all contracts, in-kind services and materials, necessary to implement the AZTech SMART corridors. Provide the State on a monthly basis, an invoice for the reimbursement of approved work completed by the City within the AZTech SMART corridors, at an estimated aggregate amount not to exceed \$100,000.00.

g. Be responsible for all video and data communications cost beyond the initial 36 month implementation of the AZTech program at an estimated cost of \$1,888.00/month. At the end of the initial 36 month period, the City may negotiate with U S West Communications, (the video and data services provider), for video and data service needs beyond the initial implementation period at the current or a reestablished service level.

h. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the City.

2. The State will:

a. Allow timely access to State AZTech Server system data bases to facilitate integration into the AZTech Project. Participate in the development and implementation of a system evaluation plan.

b. Provide assistance to the City, in project planning, design review and construction, to the extent necessary, to implement the AZTech SMART corridors.

c. Upon review of an itemized accounting of all contractual and material costs necessary to implement the AZTech SMART corridors, reimburse the City up to the approved cost within the AZTech SMART corridors, at an estimated cost not to exceed \$100,000.00.

d. Be responsible for the initial KIOSK, at an estimated cost of \$20,000.00 per KIOSK. Support and maintain all operating systems and traveler information software on the AZTech KIOSKS, at an estimated cost not to exceed \$3,000.00 per KIOSK, for the 5 year duration of the AZTech Project. Be responsible for additional KIOSKS at a fifty percent (50%) match, at an estimated cost of \$10,000.00 per KIOSK, at the location proposed by the City and agreed upon by the State, provided additional funding is available through the AZTech Project, should the City desire additional KIOSKS.

e. Be responsible for all video and data communications costs between traffic operations centers for the initial 36 month implementation of the AZTech program, at an estimated cost not to exceed \$65,000.00.

f. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the State.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until 30 June 2003, or until cancelled by either party upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

Page 4

JPA 97-99

6. All legal notices or demands upon any party relating to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

City of Scottsdale
Transportation Department
3939 Civic Center Blvd.
Scottsdale, AZ 85251

7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

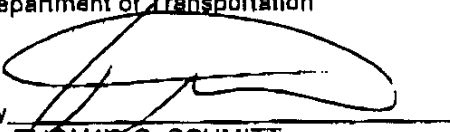
CITY OF SCOTTSDALE

STATE OF ARIZONA
Department of Transportation

By


SAM K. CAMPANA
Mayor

By


THOMAS G. SCHMITT
State Engineer

ATTEST

By

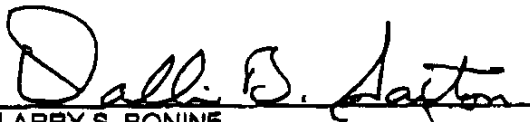

SONIA ROBERTSON
City Clerk

JPA 97-99

RESOLUTION

BE IT RESOLVED on this 1st day of July 1997, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, enter into an agreement with the City of Scottsdale, for the purpose of defining responsibilities to jointly develop the AZTech Project, establish and implement an integrated traveler information system for the multimodal traveler.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the State Engineer for approval and execution.


for LARRY S. BONINE
Director



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

GRANT WOODS
ATTORNEY GENERAL

TRN Main: (602) 542-1680
Direct: (602) 542-8837
Fax: (602) 542-3646
MAIN PHONE: 542-5025
TELECOPIER: 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR97-1869TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATE March 12, 1998.

GRANT WOODS
Attorney General

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/11028

Enc.



ARIZONA DEPARTMENT OF TRANSPORTATION

INTERMODAL TRANSPORTATION DIVISION

205 South Seventeenth Avenue - Phoenix, Arizona 85007-3213

April 28, 1998

JANE DEE HULL
GovernorMARY E. PETERS
DirectorTHOMAS G. SCHMITT
State EngineerE. JACK HAMMITT
Joint Project Administrator**FILE COPY**

Steele
Mr. Robert ~~Steele~~, Signal Systems Analyst
City of Scottsdale
3939 Civic Center Boulevard
Scottsdale, AZ 85251

Re: Agreement JPA 97-99
AZTech Project: Signal Synchronization
TRACS No.: H 4849 03X
Amendment One

Dear Mr. Steel:

Conditions have changed since the production of the above referenced agreement (enclosed). We may use this instrument to reflect those changed conditions.

The Arizona State Legislature approved House Bill 2237 and as a result has provided funding for Air Quality Enhancement Projects that have been developed through the AZTech transportation consortium. Therefore, under II. Scope, 1. The City will: add:

- i. Coordinate and upgrade its traffic signal system to facilitate the addition of the Town of Paradise Valley's traffic signals into the Scottsdale signal system, estimated to be \$120,000.00.
- j. Coordinate the upgrade of its traffic signal system to provide the AZTech system server with volume, occupancy and speed data on a cycle by cycle frequency, estimated to be \$30,000.00.
- k. Submit to the State an itemized invoice for the hardware and software development necessary to achieve the above referenced tasks.

Under II. Scope, 2. The State will: add:

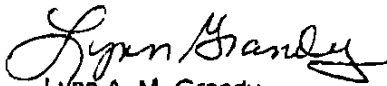
- g. Reimburse the City for the invoiced amount necessary to complete the signal system upgrade necessary to add Paradise Valley signals to the Scottsdale signal system, estimated to be \$120,000.00.
- h. Reimburse the City for the invoiced amount necessary to provide the AZTech system server cycle by cycle volume, occupancy and speed data, estimated to be \$30,000.00.

All other terms and conditions of the agreement remain the same.

Mr. Robert Steel
AZTech Project Signal Synchronization
April 28, 1998
Page 2

To properly memorialize this amendment, and to insure a meeting of the minds, please indicate your concurrence by signing in the space provided below and return one original to the undersigned at the above address to the attention of Mail Drop 616E. Questions may be directed to the undersigned at (602) 255-8088 or Mr. Jim Decker at (602) 340-8250.

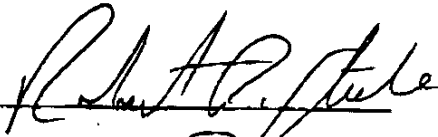
Sincerely,



Lynn A. M. Grandy
Joint Project Coordinator

Concur for City of Scottsdale

By



6-3-98

(date)

Enclosure
ltadnd

CITY COUNCIL REPORT



MEETING DATE: 04/14/2003 ITEM No. 7 GOAL: Neighborhoods

SUBJECT

Rassner/Library and Scottsdale Community/Human Services Endowments

REQUEST

Consider approving the distribution of interest income from city's endowment program; including the recommendation from the Library Advisory Board for an award of \$20,000 to the library and the recommendation of the Human Services Commission for awards of \$1,000 to Concerned Citizens for Community Health, \$1,000 to Paiute Neighborhood Center, and \$1,000 to the Foundation for Senior Living.

Related Policies, References: Resolution # 6112

BACKGROUND

The city established the endowment program in November 1991, to offer citizens an opportunity to contribute to their community with immediate and planned gifts held in perpetuity. Distributions of interest income from the endowment funds are made each year in accordance with agreements between the city and the Arizona Community Foundation, which holds the principal. This Council action distributes interest income for library services and human service programs within the City of Scottsdale for the fiscal year 2003/2004 from the following funds.

There are three funds within the Endowment from which the interest is being distributed.

1. The Rassner Memorial Fund
2. The Scottsdale Community Endowment Fund
3. The Herbert R. Drinkwater Youth Services Fund

The Rassner Memorial Fund, was established in 1989, when Mrs. Ruth S. Rassner left a portion of her estate to the Scottsdale Public Library. The gift became the basis for the Rassner Library Endowment when the funds were transferred into the Arizona Community Association in 1998.

The Scottsdale Community Endowment Fund is used to carry out the purposes of community projects and programs for the public good within the city.

The Herbert R. Drinkwater Youth Services Fund is used to support City of Scottsdale youth programs.

On February 19, 2003, the Library Board reviewed proposed uses of the interest earnings and recommended the use of \$20,000 from the Rassner Memorial Fund

Action Taken _____

for library materials for teens and for the design phase of a teen center within the Civic Center Library. Previous distributions from the Rassner funds provided Books on Tape, books on compact disc, public access PCs, replacements for book drops, and CD-Rom software.

On March 13, 2003, the Human Services Commission reviewed the proposed uses of the interest earnings and recommended that \$1,000 from the Community Endowment Fund be awarded to Concerned Citizens for Community Health for their Ballet Folklorico Program at Vista del Camino and \$1,000 to the Foundation for Senior Living for improvements to needy senior citizens' homes. The Commission also recommended that \$1,000 from the Drinkwater Youth Services Fund be awarded for the children's after school tutoring incentive program at the Paiute Neighborhood Center. Previous distributions from the Community Endowment and Drinkwater Youth Fund benefited the Victims Assistance Program, Ballet Folklorico of Concerned Citizens for Community Health, Paiute Neighborhood Center summer recreation programs, Mayor's Committee on Employment of People with Disabilities, and the Youth Corps Teen Volunteer Program.

ANALYSIS & ASSESSMENT

Recent staff action. Library staff annually analyzes current library needs and makes recommendation to the Library Board concerning the use of the annual distribution of funds from the Rassner/Library Endowment. This process began with the establishment of the fund in 1989. Significant issues addressed this year include the lack of services for teens in the Scottsdale libraries and the need to work with this population. Use of the funds, one half for teen materials and one half added to other funding for the design phase of the teen center was submitted to the Library Board for their approval.

Human Services staff incorporated the endowment funds application process into the city's application process for funding from the Community Development Block Grant, HOME funds, general funds, and Scottsdale Cares. This process includes review of requests for funding and oral presentations supporting the funding requests at Human Services Commission Public Meetings. After evaluation of the requests, Human Services staff prepare funding recommendations for consideration by the Human Services Commission.

Significant issues to be addressed. Distribution of these funds benefits youth and teens in the community by providing activities and locations for growth and development. The Ballet Folklorico is a family activity that celebrates Yaqui culture in our community. The Home Improvement Program teaches youth planning and project training skills while serving seniors in the community. The After School Tutoring Incentive Program exposes children to the importance of education, improved grades in school, socialization skills, and the value of hard work.

Community involvement. The Library Board and Human Services Commission held open public meetings to discuss the use of the endowment funds. The community raised no comments or concerns. Performance reports will be provided to the board and commission on the implementation of these programs.

RESOURCE IMPACTS

Available funding. The awards were anticipated by the city and included in the proposed 2003/2004 budget as applicable. Funds are available from the interest income on the three endowment funds. The endowment funds are held by the Arizona Community Foundation, which provides quarterly fund activity statements to the city. The statements show the principal balance and the award target for distribution of interest income for the purposes of each fund.

Fund	Balance as of 12/31/02	Award Target for 2003
Rassner Memorial	\$382,518	\$20,348
Community Endowment	\$44,676	\$2,964
Drinkwater Youth Services	\$21,168	\$1,249

Staff monitors the use of the funds through written reports and on-site visits. Staff reports to the board and commission on the achievements of the programs.

Staffing, workload impact. Staff resources are not diverted from other work priorities and additional staffing is not required immediately or in the future. There are no impacts to other departments in the city.

Maintenance requirements. The costs to monitor the performance of the programs will be absorbed within the current operating budget of the department.

Future budget implications. The library teen center is to be designed and built with funds from private sources and from possible grants. The Friends of the Scottsdale Libraries have taken this project as their primary fundraising effort. There are no plans for additional staff. There will be no increase in square footage of the Civic Center building. There are no future budget implications for the Community Endowment and Drinkwater Youth Services funds; these are one-year grants without future commitments.

OPTIONS & STAFF RECOMMENDATION

Description of Option A: Distribute the interest income from the endowment funds in accordance with the recommendations of the Library Board and Human Services Commission. The programs funded by the endowment will benefit the community by providing resources and services for the city's youth during an economic downturn that places additional stress on the city's families and youth. The distribution of interest income provides for programs and services while holding the principal to earn interest income for future programs. The use of the funds was examined in a public process and reviewed by representatives of the community.

Description of Option B: Do not distribute the interest income from the endowment funds. This would retain the interest income within the account at the Arizona Community Foundation to generate funds for future awards. However, the expected return on the investment would be low because the state of the current economy is not generating substantial interest income. Deferring the allocation of interest income would not create greater benefits in the future than spending the interest at this time where needs consistent with the purposes of the gifts/funds exist and can be addressed.

Recommended Approach: Approve the recommendations of the Library Advisory Board and the Human Services Commission concerning distribution of interest income from the city's Rassner Memorial Scottsdale Library Endowment Fund, Scottsdale Community Endowment Fund, and the Herbert R. Drinkwater Youth Services Fund in the amount of \$23,000. Distribution of these funds benefits youth and teens in the community by providing activities and locations for growth and development. It benefits the city's neighborhoods goal by providing safe places and activities for children and families and linking people to information, services, and resources.

Proposed Next Steps: Request a distribution of funds from the Arizona Community Foundation in accordance with the recommendations of the Library Board and the Human Services Commission, establish the proper accounts with Financial Services, expend the funds within the provisions of this Council Action, monitor the implementation of the program, and report to the board and commission on completion.

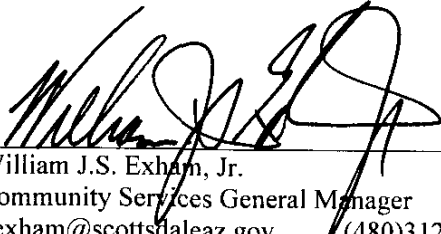
RESPONSIBLE DEPT(S)

Community Services Department, Library Division and Human Services Division


STAFF CONTACTS

Sharyn Pennington, Budget/Operations Coordinator, 312-7086
shap@scottsdaleaz.gov

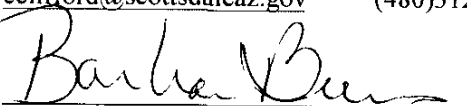
APPROVED BY


William J.S. Exham, Jr.
Community Services General Manager
bexham@scottsdaleaz.gov (480)312-2377

3/25/03
DATE


Craig Clifford
Chief Financial Officer
cclifford@scottsdaleaz.gov (480)312-2364

3/25/03
DATE


Barbara Burns
Assistant City Manager
bburns@scottsdaleaz.gov (480)312-2599

3/27/03
DATE

ATTACHMENTS

1. Resolution # 6112
2. Library Advisory Board minutes
3. Human Services Commission minutes

ATTACHMENT 1

RESOLUTION NO. 6112

A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING FIELD-OF-INTEREST AGREEMENTS WITH THE ARIZONA COMMUNITY FOUNDATION TO ESTABLISH THE HERBERT R. DRINKWATER YOUTH SERVICES FUND AND THE SCOTTSDALE EMPLOYEE ENDOWMENT FUND; AMENDING AND RESTATING THE RASSNER MEMORIAL SCOTTSDALE LIBRARY ENDOWMENT; IDENTIFYING CITY BOARDS AND COMMISSIONS TO MAKE RECOMMENDATIONS TO THE CITY COUNCIL ON THE DISTRIBUTION OF FUNDS AND OTHERWISE PROVIDING FOR THE DISTRIBUTION OF FUNDS.

WHEREAS, on or about February 1, 1993, the City entered into a component fund agreement with the Arizona Community Foundation ("ACF"), an Arizona non-profit, tax-exempt 501(c)(3) foundation, establishing the Scottsdale Community Endowment Fund, for community projects and programs for the public good within the City; and

WHEREAS, two interest funds; the Herbert R. Drinkwater Youth Services Fund and Scottsdale Employee Endowment Fund, have been operating within the Scottsdale Community Endowment Fund and will be more effectively and efficiently administered by establishing separate Field-of-Interest funds with ACF; and

WHEREAS, on or about January 21, 1998, the City entered into an agreement with the Arizona Community Foundation, establishing the Rassner Memorial Scottsdale Library Endowment, to support library and literacy programs benefiting the citizens of Scottsdale; and

WHEREAS, changes in circumstances have made it the best interests of both the City and ACF to amend the agreement establishing the Rassner Memorial Scottsdale Library Endowment and an Amended and Restated Agreement has been prepared to accomplish that end; and

WHEREAS, all of the funds administered or proposed to be administered by the Arizona Community Foundation (i.e. Scottsdale Community Endowment Fund, the Rassner Memorial Scottsdale Library Endowment, the Herbert R. Drinkwater Youth Services Fund and the Scottsdale Employee Endowment Fund) provide for funding distribution recommendations by the City, allowing the City Council to determine what boards, commissions, committees or other means should be used to assist in such recommendations.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, as follows:

Section 1. The City Council hereby authorizes and directs the mayor to execute, on behalf of the City, the following Field-of-Interest Fund Agreements with the Arizona Community Foundation: Herbert R. Drinkwater Youth Services Fund (2002-098-COS), the Scottsdale Employee Endowment Fund (2002-097-COS) and the Rassner Memorial Scottsdale Library Endowment (Amended and Restated)(2002-099-COS).

Section 2. The Human Services Advisory Commission is hereby authorized and designated to make recommendations to the City Council concerning distributions from the Scottsdale Community Endowment Fund and the Herbert R. Drinkwater Youth Services Fund.

**SCOTTSDALE PUBLIC LIBRARY ADVISORY BOARD
MEETING MINUTES
Civic Center Library Board Room
February 19, 2003**

Members Present: Judith Crider, Chair
Jerry Hargitt, Vice Chair
David Berry
Barbara Nordlund
Linda Tardie
Nancy Walker

Others Present: Rita Hamilton, Library Director
Mary Johnson, Library Operations Manager
Sharyn Pennington, Library Operations Coordinator
Dana Braccia, Community Relations Coordinator
Debbie Tang, Library Manager, Special Projects/Facilities
Bill Pillow, Public Services Manager

Guests: Shari Varahramyan, Scottsdale citizen
Susan Wagner, Scottsdale citizen

Mrs. Crider called the meeting to order at 3:35 p.m. She welcomed new Board member Nancy Walker, who has just joined the Library Advisory Board for a three-year term.

Library Director Rita Hamilton thanked Barbara Nordlund for her dedication and service as our immediate past Chairman and presented her with a token of appreciation on behalf of the board and staff.

Mrs. Crider asked for a motion to approve the minutes of the January 15, 2003 meeting. Mrs. Nordlund so moved; Mr. Hargitt seconded, and the motion carried 6-0.

Library Staff Reports of Current Events (A.R.S. 38/431.02 (K))
Monthly Statistical Report – Sharyn Pennington

	<u>January 2002</u>	<u>January 2003</u>	<u>% Change</u>
Library Collection		725,797	
Items Circulated	171,788	174,780	+1.7%
Attendance	147,249	144,136	-2.1%
Volunteer Hours		2,561	

Special Revenue Account Report – Sharyn Pennington

The Gift & Memorial Trust Account received \$8,090 for the month; expenses were \$7,567.95, leaving a spendable balance of \$41,957.37.

\$210,309.21	Library Book Sale Special Revenue Account
12,879.14	Income from sales
<u>7,230.70</u>	Spent in January
\$ 215,957.65	Total spendable Revenue
\$ 113,763.37	Approximate Available Total

Library Director's Report – Rita Hamilton

Ms. Hamilton reported that over 180 volunteers, plus City dignitaries and selected library staff, attended the recent Hearts & Flowers Annual Volunteer Award Luncheon at Gainey Ranch Golf Club and were awarded certificates and gifts.

We are planning an all-staff training day, *Choosing to be Great*, on March 14 with two half-day repeat sessions. Mustang and Civic Center will remain open, and Palomino and Arabian branches will be closed since it is spring break and attendance is down.

Seventy-five teens attended our latest teen center focus group meeting with the architects and library staff, and identified very enthusiastic ideas on designing their space. We will present the Board with the architect's concept next month.

At the City Manager's recent all-employee forum, the library system was recognized for cost saving efforts in two of the many areas we submitted. We reduced the amount of mending on older and damaged materials and trained volunteers to do the mending. At Palomino, we increased the public's use of the self-check machines by 10%, cutting down on staff time, which allowed them to absorb a vacant position.

Ms. Hamilton then alerted the Board to a recent program on ABC-TV, Channel 15 in Phoenix, entitled *Porn at the Library*, in which several facts were either distorted or misrepresented entirely. It targeted Phoenix Public Library, where adult PCs are not filtered for content. Ms. Hamilton assured the Board that all the Scottsdale Public Library System PCs are filtered. If an adult needs to access a website that is blocked, staff can turn the filter off so the patron can access it. After their computer time is over, the librarian again activates the filter on that computer.

Library Services Highlight:

Ms. Hamilton introduced two staff members who explained the details of three programs that are funded by the Board. Librarian Louisa Aikin described the Battle of the Books

Scottsdale Public Library Advisory Board Meeting Minutes
February 19, 2003
Page Three

(grades 5 and 6) and Beyond Battle of the Books (grades 7 and 8). Dana Braccia, Community Relations Coordinator, explained the OneBookAZ program for adults, which generates interest in literature and increases library awareness through reading and discussing the same book statewide.

Items Requiring Board Action

Expenditures:

Feb	Battle of the Books/Beyond Battle of the		
2003	Books	\$ 11,000	Marsha Greene
	Urban Libraries membership	\$ 3,000	Rita Hamilton
	Movie License	\$ 2,638	Dana Braccia
	National Volunteer Week Recognition	\$ 500	Michelle Brooks
			Dana Braccia/Joanne
	OneBookArizona	\$ 1,000	Hamilton-Selway
			Alex Barnard/Dana
	Adult Programs 3#	\$ 1,000	Braccia
	<i>February Total:</i>	\$ 19,138	

After discussion, Mr. Hargitt moved to approve the February expenditures as reported. Ms. Tardie seconded, and the motion carried 6-0.

Rassner/Library Endowment:

Ms. Hamilton explained that the Rassner Endowment was established through the Arizona Community Foundation for the benefit of the Scottsdale Public Library System and that this fiscal year's disbursement of \$20,000 will be used to fund the purchase of library materials and design expenses for the teen center.

After discussion, Mr. Hargitt moved to approve the recommended disbursement of \$20,000 from the Rassner Endowment, Mrs. Nordlund seconded, and the motion passed 6-0. The recommendation will now be forwarded to City Council for acceptance.

Informational Items

Sister City Visit:

Mrs. Nordlund told the Board about her recent visit to Scottsdale's sister city, Alamos, Mexico, to present \$1,000 worth of new books to their local library to aid the citizens in learning English. She showed photographs of the Alamos library and the patrons reading

the bilingual books. The Board had approved funding the gift books from the Trust Fund last year. She relayed an expression of thanks from the Alamos citizens and their desire to visit Scottsdale sometime this year.

OPEN CALL TO THE PUBLIC

Scottsdale citizens Shari Varahramyan and Susan Wagner entered the meeting. They stated that they wished to appeal the Board's decision of January 15, 2003 denying the Library's co-sponsoring their *Family Initiative as 'Community Service'* meeting, which is held weekly at Civic Center Library. After they spoke, Ms. Crider explained that the Board could not discuss or take action on any matter presented during Open Call at a meeting unless it is properly noticed for discussion on the agenda (ARS38-431.02.) Ms. Crider explained that in order for the Board to further discuss the matter, it would have to be placed on the Board agenda next month.

Adjournment:

There being no further business, Ms. Crider called for a motion to adjourn. Ms. Tardie so moved, Mr. Hargitt seconded, and the February Library Advisory Board meeting was adjourned at 5:00 p.m.

Mary Warner, Administrative Secretary

Minutes
Human Services Commission
Wednesday, March 13, 2003
5:00 P.M.
City Hall - Kiva
3939 Drinkwater Boulevard
Scottsdale, AZ 85251

Present: Chairwoman Fausel, Vice-chair Bachmann, Commissioners Bitenc, Bilsens, Broshar, Coudroglou and Resnick

Staff Present: Connie James, Mark Bethel, Diane Kallal, Valerie Kime Trujillo, Amy Pendleton, Donna Brower, Phil Hershkowitz, Beverly Johnson, Jack Miller

CALL TO ORDER

Chairman Fausel called the meeting to order at 5:00 pm.

APPROVAL OF MINUTES FROM FEBRUARY 20, 2003 MEETING

Commissioner Resnick moved for approval of the February 20, 2003 meeting minutes with the following correction:

Under ADJOURNMENT the minutes should read:

With no further business to be brought before the commission, Chairwoman Fausel asked for a motion to adjourn the meeting. Commissioner Resnick moved to adjourn the meeting and Chairwoman Fausel seconded. The motion carried unanimously and the meeting adjourned at 6:30 pm.

Commissioner Coudroglou seconded and the motion carried unanimously.

CDBG/HOME/SCOTTSDALE CARES/GENERAL/ENDOWMENT FUND RECOMMENDATION TO THE CITY COUNCIL

Mark Bethel, Community Assistance Manager, briefed the commission on the process of CDBG, HOME, Scottsdale Cares, General and Endowment funding recommendations to the City Council with the following statement:

Madam Chair and Members of the Commission: On February 3 and 5, the Human Services Commission conducted a public hearing and heard testimony from applicants for CDBG, HOME, General Fund, Endowment Fund and Scottsdale Cares funding for Fiscal Year 2003/2004. On February 20, the Commission reviewed and discussed staff funding recommendations. Tonight's agenda item allows the Commission to formally vote on CDBG, HOME, Scottsdale Cares, General Fund and Endowment funding recommendations to be considered by the City Council on April 14.

The Funding Recommendation Worksheet in your Commission Packet reflects staff's recommendations for funding as well as the Commission's final determination for funding.

CDBG recommended funding include:

\$210,000 for Public Service Activities to 11 Non Profit Agencies
(15% maximum allocation)

\$ 75,000 for Public Facility Activities to 1 Non Profit Agency

\$904,000 for Housing Related Activities:

\$637,760 for Housing Rehabilitation to the City of Scottsdale Rehab Program and Foundation for Senior Living

\$266,240 for the 1st Homebuyer Program to Community Services of Arizona

The total CDBG recommended allocation for FY 2003/04 is \$1,469,000, which includes the 20% annual allocation for administrative costs. (\$280,000)

In addition to recommending the CDBG allocations to Council, staff will also request permission to execute the contract with Foundation for Senior Living for their Emergency Repair Program prior to the start of the program year (July 1). At the end of this month, Emergency Repair funds will have been exhausted for the remainder of this year. The purpose of this request is to ensure that funds are available to continue to serve citizens who are in need of Emergency Repairs for the rest of the fiscal year.

Based on the recommendations from the City of Scottsdale Housing Board, HOME funds are to be awarded to 1 Non Profit Agency in the amount of \$300,000 for the acquisition and rehabilitation of rental property. In addition, the Board has recommended that the agency receive the \$100,000 available from the City of Scottsdale Affordable Housing Trust fund. We have finally received confirmation for next year's HOME funding from HUD; total HOME Funds available for allocation amounts to \$397,399.

We cannot award the additional 97,399 received from HUD because we only received one proposal for 400,000 and that is our maximum amount to be award in FY 03/04.

\$190,000 is recommended for funding for the Scottsdale Cares Program to 18 Non Profit Agencies.

\$180,000 is recommended for funding for the General Fund Human Services Contracts to 9 Non Profit Agencies.

Finally, I'd like to thank the members of this Commission as well as the Housing Board for all their hard work and diligence during this funding process.

Connie James added that the information for the endowment funds was contained in the commissioner's packets. She then asked Chairwoman Fausel to read the conflict of interest statement prior to the vote.

Chairwoman Fausel read the following Conflict of Interest Statement:

The Arizona Conflict of Interest laws are found in Arizona Revised Statutes Sections 38-501 through 38-511. They apply to public officers and employees of various public bodies and political subdivisions, including city boards and commissions, such as the Human Services Advisory Commission.

The statutes prohibit public officers and employees from engaging in certain types of activity or conduct, including participating in or voting upon contracts or other matters in which they, or a relative, have a substantial interest. A "substantial interest" is defined as "any pecuniary or proprietary interest, either direct or indirect."

In other words, if you as a Commission member, or a relative of yours, have a money or property interest that may be affected, either positively or negatively, by the action of the Commission, relating to a matter before it, you have a conflict of interest. You may not participate in nor vote upon any such matter. When you become aware of a conflict of interest, the law requires that you make that interest known on the official records of public agency, in this case the Commission minutes, and refrain from participating in any manner in such decision.

Chairwoman Fausel asked if anyone wished to make known a conflict of interest, for the record. Chairwoman Fausel stated that she had a conflict of interest with Scottsdale Cares and would recuse herself from voting on that item.

Chairwoman Fausel called for a motion to approve the funding recommendations for the CDBG and HOME funding recommendations and to have these recommendations considered by the City Council on

April 14, 2003. Commissioner Broshar moved to accept the funding as recommended and Commissioner Bilsens seconded; the motion carried unanimously.

Chairwoman Fausel called for a motion to approve the funding recommendations for the General funds funding recommendations and to have these recommendations considered by the City Council on April 14, 2003. Vice-chair Bachmann moved to accept the funding as recommended and Commissioner Coudroglou seconded; the motion carried unanimously.

Chairwoman Fausel called for a motion to approve the funding recommendations for the Scottsdale Cares funding recommendations and to have these recommendations considered by the City Council on April 14, 2003. Commissioner Resnick moved to accept the funding as recommended and Commissioner Coudroglou seconded; the motion carried unanimously, with Chairwoman Fausel recusing herself.

Chairwoman Fausel called for a motion to approve the funding recommendations for the Endowment funding recommendations and to have these recommendations considered by the City Council on April 14, 2003. Commissioner Coudroglou moved to accept the funding as recommended and Commissioner Bilsens seconded; the motion carried unanimously.

Mr. Bethel indicated that he would present the recommendations for the CDBG/HOME, General and Scottsdale Cares funds to the City Council at their April 14 meeting, and that John Larrivee will present the recommendations for the Endowment funds. In addition, Chairwoman Fausel will comment on the funding process at the same meeting.

FAMILY ADVOCACY PRESENTATION

Connie James, Human Services Director, introduced the presentation on the Family Advocacy Center. Commissioners toured the facility on March 3, 2003. The presentations provided the commission with insight on how the center functions and the role of those involved.

HISTORY OF THE FAMILY ADVOCACY CENTER

Sgt. Bruce Ciolli provided an introduction and history of the Family Advocacy Center.

Vice-chair Bachmann asked what materials are still needed for the center. Sgt. Ciolli stated that the other presenters would give more detail to the materials, but he did mention a few items: puzzles, toys, games, a computer, a television with built in VCR, and front courtyard landscaping.

Chairwoman Fausel asked if the process of interviewing a child victim is unique to Scottsdale. Sgt. Ciolli, said, no, the process is not unique. He added that there is a protocol regarding sexual assault interviews, which has changed and more jurisdictions are using that protocol, however, the process of having those involved in a sexual assault crime in one place is unique to advocacy centers.

INVESTIGATIVE RESPONSE INFORMATION

Detective Nelson Lapan, from the Family Advocacy Center, provided information on how the police get involved and what their response entails.

FORENSIC EXAMS AND THE MEDICAL RESPONSE

Kim Yedowitz, F.N.E., outlined for the commission what is involved with a medical response and forensic exams.

Vice-chair Bachmann asked what kind of follow up do Kim and her colleagues provide for victims. Ms. Yedowitz said that they do contact victims to see if they have any questions and also to see if they are following the recommendations given by the nurses, such as seeking counseling, which is also on site.

Ms. Yedowitz also said that they provide a written list of referral options to victims, and the fact that crisis intervention is on sight, victims receive services sooner and therefore significantly decrease the chances of post traumatic stress disorder. She ended by saying that they have contacts to follow up, but they are minimal because they encourage victims to see their own physicians.

Vice-chair Bachmann asked if there are bilingual services offered. Ms. Yedowitz said yes, they do have bilingual translators from Scottsdale Healthcare, a crisis intervention specialist that is bilingual, a contract with Valley Center for the Deaf, as well as a specialized handset to access 90 different languages, which can translate in about 90 seconds.

POLICE CRISIS INTERVENTION SERVICE RESPONSE

Tracey Wilkinson, M.S., provided information on Police Crisis Intervention Services' response and their role at the Family Advocacy Center.

Chairwoman Fausel asked about the Family Advocacy Center's relationships with school districts. Ms. Wilkinson said that their relationship is good, especially since they have school resource officers in each of the schools. In addition, she said that the nurses travel to the schools teaching students about dating and relationship violence.

VICTIM SERVICES

JoAnn Del-Colle, C.I.S.W., provided the commission with information on Victims' Services and their involvement at the Family Advocacy Center.

Vice-chair Bachmann asked, referring to the 60% increase in the victims that Scottsdale serves, has there been an increase in services. Ms. Del-Colle said that the increase was proportionate to the services given. Vice-chair Bachmann asked if there were any statistics on domestic violence and Ms. Wilkinson gave the following numbers: 1999 – 851; 2000 – 1,124; 2001 – 1,429; 2002 – 1,500.

Vice-chair Bachmann asked if the trend is going up for sexual assault. Ms. Del-Colle said yes, especially for date/acquaintance and drug related rape.

Vice-chair Bachmann asked for clarification on what sand tray therapy is and Ms. Del-Colle explained.

Ms. Del-Colle introduced Amy Pendleton, Human Services Coordinator at Via Linda Senior Center and said that she will be helping at the center as well as facilitating the sexual assault group.

Chairwoman Fausel asked if, considering the economic times we are experiencing, does Ms. Del-Colle see the numbers of victims increasing? Ms. Del-Colle said yes, she thinks that is realistic.

FAMILY ADVOCACY CENTER QUESTION AND ANSWER SESSION

The presenters responded to questions from the Human Services Commission.

Vice-chair Bachmann asked for a phone number where people can call to donate items. Sgt. Ciolli said interested people could call 480-312-6300, the main number, which can be routed to the appropriate place.

Ms. James thanked the Family Advocacy Center staff for their presentation, the work that they do and for taking time to make their presentations for commission.

STAFF AND COMMISSION UPDATES

Ms. James said that the next meeting will be held on March 27, 2003 at the Paiute Neighborhood Center and there will be another presentation on the Community Services Facilities Plan and the commission will be asked to make a recommendation to City Council. The agenda will also include the Intergovernmental Agreement with the Scottsdale School District and a presentation on the East Valley Needs Assessment.

OPEN CALL TO THE PUBLIC

Chairwoman Fausel made an open call to the public for comments/questions/announcements or other business. There were none.

ADJOURNMENT

With no further business to be brought before the commission, Chairwoman Broshar asked for a motion to adjourn the meeting. Commissioner Coudroglou moved to adjourn the meeting and Commissioner seconded. The motion carried unanimously and the meeting adjourned at 6:00pm.

Respectfully submitted by Mary Beth Bossert, Recording Secretary.

Meets established criteria.

A handwritten signature in black ink, appearing to read "Connie James", is written over the printed name.

Connie James
Director, Human Services

CITY COUNCIL REPORT



MEETING DATE: 04/14/2003 ITEM NO. 8 GOAL: Neighborhoods

SUBJECT Sole Source Purchase of 3M SelfCheck Machines for the Scottsdale Library System

REQUEST Consider authorization of a sole source purchase from 3M Library Systems for replacement of eight (8) self check out machines for use at four (4) Scottsdale library locations and one (1) outreach site at a total price of \$172,640.00.

BACKGROUND

The library utilizes a library automation system to manage its collection inventory, which currently contains 720,000 items. The library also utilizes a security system developed by 3M, which interfaces with the automation system. Each component of the security system must be either a 3M product or a product that is compatible with the security system. The two systems work together to manage and provide security for the library's materials.

One integral component of this system is the self-check machines. These machines allow the library patron to check out material without the intervention of a staff member. Another important piece of the self-check machine system is the Tattle Tape that is inserted into each item in the library collection. This Tattle Tape is a magnetic strip that is either magnetized, when shelved in the library inventory, or demagnetized, when a patron checks out the material. An item being carried out of the library will set off the alarms at the exits of the library if the item is not demagnetized when it is checked out. Another important function of the self-check machine is to read the barcode information of the item at the time of checkout and communicate this information to the library automation system for tracking inventory and patron records.

History:

- In 1983, the Library purchased the initial library book security system for the Civic Center Library from 3M, which consisted of electronic devices to magnetize/demagnetize the 3M Tattle Tape security strips placed in each library item and the security gates to monitor the transportation of library materials out of the library.
- In 1987, an additional security system was purchased to be installed in the new Mustang Library. In order that the systems be compatible and work together, the City Council authorized a sole source purchase of this additional equipment.
- In 1991, the Library expanded the capabilities of the existing security system

Action Taken _____

ANALYSIS & ASSESSMENT

with the purchase of 3M detection computers that were compatible with the existing security technology.

- In 1994, three additional 3M security gates were purchased for the expansion of the Civic Center Library.
- Also in 1994, the first purchase of eight 3M SelfCheck Machines was made for use in all four library facilities, which included the existing Civic Center Library, the Mustang Library, and the new Arabian Library and Palomino Library that were in the planning stages.
- In 1995, a 3M security system and staff workstation was purchased for the new Palomino Library.
- In 1996, similar 3M security system equipment was purchased for the new Arabian Library.

Recent staff action. Staff has researched the recent history of purchases of self check out machines by libraries valley wide. In 2002, the City of Tempe issued an Invitation for Bid for the Tempe Public Library for new self-check machines. Three companies – 3M, Vernon, and Codeco of Canada - responded with proposals all claiming to be compatible with the existing 3M security gates and system in use at the Tempe Public Library. The analysis for award of the contract was based primarily on purchase price and maintenance costs. A contract for three units was awarded to Codeco of Canada. The equipment when delivered and installed never functioned according to specifications. Numerous on-site repair visits by the vendor were unsuccessful. Codeco was subsequently found to be in default of the contract. The City of Tempe no longer uses these machines and is trying to get Codeco to take them back. Based on these circumstances, the Tempe City Council authorized a sole source purchase of three 3M SelfCheck Machines.

The Maricopa County Library District awarded a contract for nine machines to Vernon, a vendor of another brand of self-check machines who also submitted a proposal to the Tempe bid but was not awarded a contract. When installed, the equipment presented severe service issues that were basically unsolvable. The Tattle Tape management system failed resulting in constant false alarms at the security gates. In addition, the built-in receipt printers failed to work. The district has subsequently stopped using all the Vernon-supplied equipment and also resorted to a sole source purchase of 3M SelfCheck.

This research indicates the current market availability for this type of equipment. It is noteworthy that other Valley library agencies have had to initiate sole source purchases of 3M SelfCheck Machines during 2002 and 2003. In addition to the ones mentioned above, other Valley agencies including the City of Phoenix, the City of Chandler, and the City of Mesa have had to make similar sole source purchases of 3M SelfCheck machines.

Significant issues to be addressed:

The library system currently owns eight (8) 3M SelfCheck machines Model #5210 bought in 1994. Due to changes in computer technology, some critical parts for this model are no longer available in the market place. 3M no longer provides support of the Model #5210 beyond December 2002.

In 2001/02, Scottsdale Public Library System checked out 1,934,527 items of which 549,086 items (28%) were checked out by the 8 self check out machines. This workload would have taken 5.29 FTE to complete. This resulted in an annual saving of \$169,280 in staff salaries and benefits. If we do not replace the existing eight SelfCheck units, we would have to find at least 5.29 FTE to meet demand.

Existing staff would have to be reassigned, thus adversely affecting other vital library services. This action would result in longer waiting lines at the check out stations and potential patron complaints.

Historically, library circulation goes up during hard economic times. The library circulation has experienced 4% growth each year in the recent two years. The trend will most likely continue in light of the current economic forecasts.

RESOURCE IMPACTS

Available funding. Funding was approved in Bond 2000 as part of the project for Self Check Machine/LAN Infrastructure Replacement totaling \$520,900.

Maintenance requirements. The purchase price of \$172,640 includes a 15-month service warranty. It means that we do not need to purchase a maintenance agreement until 2004/05. At that time, the annual maintenance cost will be \$3,400 for each unit for a total annual cost of \$27,200.

Future budget implications. The annual cost of \$27,200 will be available when the existing machines are replaced as they currently have maintenance agreements.

OPTIONS & STAFF RECOMMENDATION

Description of Option A: Authorize the sole source purchase of eight self check machines from 3M at the quoted price of \$172,640. This price is very acceptable as it also includes a credit of \$6,000 for each of the eight existing pieces of equipment that are outdated and no longer supported by 3M.

Description of Option B: Reject this request for sole source purchase. This will result in the need to conduct a formal bid solicitation. However, as discussed above, several other agencies have tried to bring competition into the procurement of this equipment and have met with failure through contract defaults. Each has subsequently had to resort to a sole source purchase from 3M. The alternative of trying to bring in a completely new system would be very expensive and, therefore, cost prohibitive.

Recommended Approach: Authorize the sole source purchase through 3M Library System. Purchasing Director concurs with the sole source procurement and has established Sole Source Bid File #03SS042 for this action.

Proposed Next Steps: Staff will follow up with Purchasing to complete the procurement process.

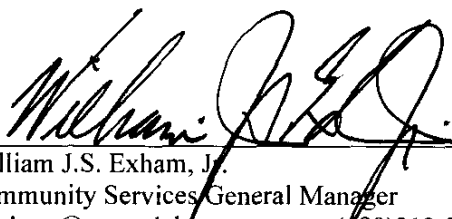
RESPONSIBLE DEPT(S)

Community Services Department/Library Division and Financial Services Department/Purchasing Division.

STAFF CONTACTS

Debbie Tang, Special Projects/Facilities Manager, (480) 312-2040
dtang@scottsdaleAZ.gov


APPROVED BY



William J.S. Exham, Jr.
Community Services General Manager
wexham@scottsdaleaz.gov (480)312-2377

3/24/03

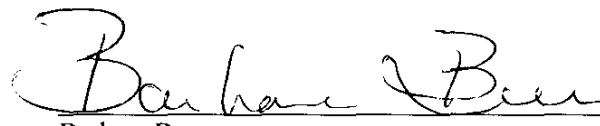
DATE



Craig Clifford
Chief Financial Officer
cclifford@scottsdaleaz.gov (480)312-2364

3/24/03

DATE



Barbara Burns
Assistant City Manager
bburns@scottsdaleaz.gov (480)312-2599

3/27/03

DATE

ATTACHMENTS

1. Quote from 3M Library Systems

3M Materials Flow Management Systems Proposal

75-0299-6230-7 (Form 34050 - B - PWO)

3M Library Systems

P.O. Box 33682
St. Paul, MN 55133-3682

1-800-328-0067 ext. 2

Fax 1-800-223-5563

Library Scottsdale Public Library		Purchase Order #	
Contact Name Sharyn Pennington and Debbie Tang		Authorized By	
Phone Number 480-312-7086	Fax Number 480-312-7993	Date	
Address 3839 N. Drinkwater Blvd		Mail To 3M Library Systems P.O. Box 33682 St. Paul, MN 55133-3682 or Fax To Fax 1-800-223-5563	
City, County, State, Zip Scottsdale, AZ 85251			

Product Description

	Quantity	Unit Price	Install Price	Item Price
Model 7210 SelfCheck System	8	\$27,330.000		\$218,640.00
With VCU				\$0.00
Trade-In Discount	8	-\$6,000.000		(\$48,000.00)
				\$0.00
				\$0.00
Contract Number for Tempe's purchase				\$0.00
Sole Source Award Contract Number:				\$0.00
03-104-01				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
Subtotal Equipment and Markers			\$0.00	\$170,640.00

Service Agreement

Equipment	Zone	Qty	Duration/ Months	Unit Price	Total Unit Price	\$170,640.00
Model 7210	1	1	12	\$3,400.00	Unit Tax	\$0.00
					Install Charge	included
					Install Tax	\$0.00
					Service Agreement	
					Freight	\$2,000.00
					Total Proposal	\$172,640.00
Subtotal Service				\$3,400.00		

Other Information

The price includes installation, freight, training and a 15 month service warranty.	Technology Solution - Financing Option	
Service after first 15 months listed above:	12 Monthly Payments	
One Year 100% Satisfaction Guarantee	24 Monthly Payments	
	36 Monthly Payments	
3M Representative Jacob Haas	Signature	Date
	800-328-0067 option 3 x35	03/11/2003

Quotations are good for 90 days from the above date. Mail or Fax purchase order to the address above.

Terms are NET 20 Days

CITY COUNCIL REPORT



MEETING DATE: 04/15th/2003 ITEM No. 9 GOAL: Neighborhoods

SUBJECT

State grant-in-aid

REQUEST

Accept Arizona State Library State Grant-In-Aid construction grant for \$25,000. The grant will be used to replace a portion of City funds budgeted for the Mustang Library ADA project. The project is budgeted in the Facilities Maintenance FY 2002/03 operating budget for \$131,000. The project scope has been reduced and the total project cost is approximately \$94,000. The grant was anticipated and included in the approved FY 2002/03 Grants budget.

Related Policies, References: Americans with Disabilities Act, 1990

BACKGROUND

The Mustang Library located at 10101 N. 90th Street was built in 1987. This 31,500 square foot facility had an attendance of 392,925 in the last fiscal year. Over the years various issues relating to safety and access have become apparent and need to be corrected. As part of the ADA assessment, alterations need to be made to the reference/information desk, the lobby and to the restrooms to bring them into compliance with ADA. This grant, available through the Arizona State Library, Archives, and Public Records, will supplement City funds. The project was identified for completion this fiscal year using City Facilities Maintenance funds and will be leveraged with Risk funds of \$5,000 and the state grant-in-aid of \$25,000.

The Library Advisory Board voted to recommend acceptance of this grant at their March 19th meeting.

ANALYSIS & ASSESSMENT

Recent staff action. Staff completed the initial application for this grant in August 2002, notifying Financial Services at the time the application was submitted. The Library System was notified in February that Scottsdale was eligible to receive this grant allowing the project to move forward.

Significant issues to be addressed. The lobby, public restrooms, and reference desk need significant alterations and repairs to conform to the Americans With Disabilities Act. Completion of the project will accommodate library users who have had difficulty in using Mustang and will resolve currently identified ADA issues. The restrooms will be renovated to provide easier access to wheelchairs. Also, new automatic sliding doors will be added to the entrance between the lobby and the library collection area. The reference information desk will be rebuilt, lowered and relocated to allow wheelchair users better access and provide for better security of the area.

Action Taken _____

This is part of the City's continued commitment to resolve identified ADA issues at public facilities.

RESOURCE IMPACTS

Available funding. The Mustang Library ADA project was budgeted in the Facilities Maintenance FY 2002/03 budget (100-05284-52230) for \$131,000. The project scope has been reduced and the total project cost is approximately \$94,000. If accepted the grant will fund \$25,000 of the total project cost. Facilities Maintenance operating budget (approximately \$50,000), CIP ADA funding (\$14,000), and a City Risk Management grant (\$5,000) will fund the remaining project cost. The grant was anticipated and included in the approved FY 2002/03 Grants budget.

State Grant in Aid	\$25,000	
City Risk grant	\$ 5,000	
CIP ADA funding	\$14,000	
Facilities Maintenance budget	\$50,000	
TOTAL Project Cost		\$94,000

Staffing, workload impact. There will be no additional staff required, nor will the workload increase due to this project. Staff working at the reference/information desk at Mustang will be able to provide better service to a segment of the population that has been underserved.

Maintenance requirements. There will be no additional maintenance requirements. Normal maintenance is currently budgeted.

Future budget implications. There are no future budget implications.

OPTIONS & STAFF RECOMMENDATION

Description of Option A: Approve acceptance of this grant which will reduce the amount of City operating funds necessary for this project.

Description of Option B: Do not accept the grant and use only City funds reducing the scope of the project.

Recommended Approach: Accept the \$25,000 grant.

Proposed Next Steps: Complete project design and begin construction of the project by July with completion by mid August.

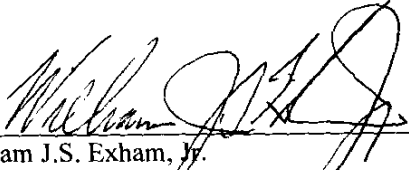
RESPONSIBLE DEPT(S)

Community Services Department, Library Division

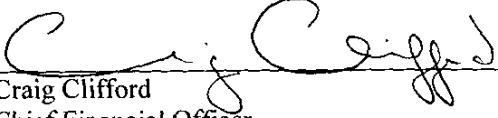
STAFF CONTACTS

Debbie Tang, Special Projects Manager, 312-2040, dtang@ScottsdaleAZ.gov
Steve Arnold, Contracts Coordinator, 312-2181, stevearnold@ScottsdaleAZ.gov

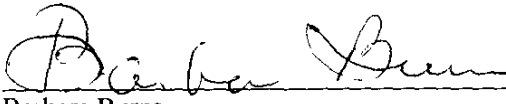
APPROVED BY



William J.S. Exham, Jr.
Community Services General Manager
bexham@scottsdaleaz.gov (480)312-2377
DATE 3/25/03



Craig Clifford
Chief Financial Officer
cclifford@scottsdaleaz.gov (480)312-2364
DATE 3/25/03



Barbara Burns
Assistant City Manager
bburns@scottsdaleaz.gov (480)312-2599
DATE 3/27/03

Item # 10 - Amendment to
Recreational Land Use
Agreement - WITHDRAWN

CITY COUNCIL REPORT



MEETING DATE: 04/14/2003

ITEM No. 11

GOAL: Fiscal Management

SUBJECT

Authorize Professional Services Agreement No. 2003-047-COS for Financial Advisor

REQUEST

That the City Council authorize the Mayor to sign Professional Services Agreement No. 2003-047-COS with US Bancorp Piper Jaffray Inc. for Financial Advisor.

BACKGROUND

The current Professional Services Agreements for Financial Advisor will expire on April 30, 2003; therefore Financial Services staff initiated a Request for Proposal (RFP) in order to canvas the financial community for renewal of this Agreement. Responses to the RFP were received at 2:30 p.m. on February 27, 2003.

ANALYSIS & ASSESSMENT

Proposals were received from the following firms:

- (1) Peacock, Hislop, Staley & Given, Inc.
- (2) RBC Dain Rauscher
- (3) US Bancorp Piper Jaffray Inc.

The recommended firm was selected on the basis of staff review of 6 primary evaluation criteria which included

- qualifications of the firm,
- qualifications of the team,
- financial advisor/underwriting experience,
- compatibility with Scottsdale's needs,
- responsiveness,
- cost.

The team also evaluated 22 sub-criteria. All 3 proposals met the City's requirements, and all 3 firms demonstrated that they are highly qualified. After careful review, the evaluation team scored US Bancorp Piper Jaffray highest primarily due to the qualifications of the firm, their experience with Arizona municipalities, and their current knowledge of Scottsdale.

The evaluation team noted that the US Bancorp announced spin off of Piper Jaffray will not have a material effect on the City's Agreement. Following the spin off, Piper Jaffray will become an independent publicly traded company. The transaction is expected to be completed in the fall of 2003.

RESOURCE IMPACTS

Awarding of the Professional Services Agreement for Financial Advisor will provide the necessary financial advisory services for bond issues and other financings.

There are no annual retainer costs involved in this Agreement. The professional fees and expenses are paid as part of the cost of issuance at the time of sale of a specific bond issue.

Under this Agreement, the Financial Advisor will be paid a \$0.95 per \$1,000 for General Obligation (GO) and Highway User Revenue Fund (HURF) Bonds for the first \$50,000,000 plus \$0.75 per \$1,000 thereafter (\$15,000 minimum; \$75,000 maximum).

Fees for Water Revenue, Municipal Property Corporation (MPC), and Scottsdale Preserve Authority (SPA) Bonds will be \$1.10 per \$1,000 for the first \$25,000,000 plus \$0.95 per \$1,000 from \$26,000,000 through \$50,000,000; and \$0.75 per \$1,000 thereafter (\$20,000 minimum; \$80,000 maximum).

Fees for Improvement District Bonds, Community Facilities District Bonds, and Refunding Bonds will be \$1.50 per \$1,000 for the first \$25,000,000 plus \$1.25 per \$1,000 from \$26,000,000 through \$50,000,000; and \$1.00 per \$1,000 thereafter (\$25,000 minimum; \$70,000 maximum).

For other financial advisory services provided outside the requested Scope of Services, the Advisory Fee is \$175.00 per hour for Vice President and above and \$90.00 per hour for Associate/Administrative Assistant.

Incidental costs of issuance such as printing and distribution of official statements, printing of bonds, and rating fees will be the responsibility of the City.

**OPTIONS & STAFF
RECOMMENDATION**

Not approving Professional Services Agreement No. 2003-047-COS would require the City to separately hire a Financial Advisor for every bond issue.

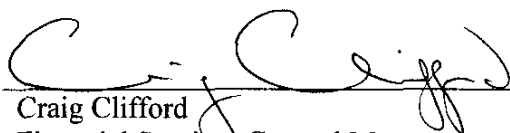
RESPONSIBLE DEPT(S)

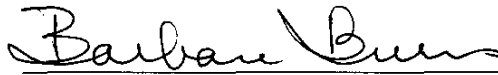
Financial Services Department
Administration Division

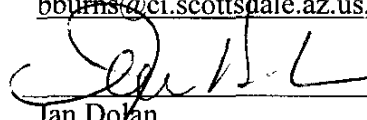
STAFF CONTACTS

Rebecca A. Eickley, Finance and Energy Manager, (480) 312-7084
reickley@ci.scottsdale.az.us

APPROVED BY

 3/25/03
Date
Craig Clifford
Financial Services General Manager
cclifford@ci.scottsdale.az.us, (480) 312-2364

 3/25/03
Date
Barbara Burns
Assistant City Manager
bburns@ci.scottsdale.az.us, (480) 312-2599

 3/24/03
Date
Jan Dolan
City Treasurer
jdolan@ci.scottsdale.az.us, (480) 312-2422

ATTACHMENTS

1. Professional Services Agreement No. 2003-047-COS



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, made and entered into this ^{5th} 14th day of April, 2003, by and between the City of Scottsdale, a Municipal Corporation of the State of Arizona hereinafter referred to as "City", and US Bancorp Piper Jaffray, a Corporation of the State, hereinafter referred to as "Contractor".

WITNESSETH

THAT, the Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services;

WHEREAS, the City desires to contract for FINANCIAL ADVISOR;

WHEREAS, Contractor is duly qualified to perform the requested services;

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Contractor shall act under the authority and approval of the Contract Administrator for the City, further named herein, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The Contractor shall assist the City's bond counsel on all items of financing necessary to its operations including but not limited to general obligation, street and highway, water and sewer revenue, Municipal Property Corporation, Scottsdale Preserve Authority, community facilities district, and improvement district bonds and other related financial services.

The firm shall provide financial advisory counsel services including, but not limited to:

A. For Each Debt Issue

1. Creation and discussion of structuring alternatives within the confines of the market, acceptable risk and legal constraints.
2. Recommendation of an amortization schedule.
3. Assistance in requesting, preparing and presenting information to the rating agencies including practice presentations.

1.1 SERVICE DESCRIPTION (Continued)

4. Recommendation of trustee, registrar, paying agent.
5. In a competitive sale, recommendation of the firms to whom the bid form should be sent, the timing of the sale, and evaluation of bids.
6. Preparation of Preliminary Official Statement and Official Statement. Selection of bond and/or electronic printers.
7. Coordinate those necessary activities of a legal nature with the City's designated bond counsel.

B. General Services

1. Assistance in the development of capital improvement plan including debt capacity constraints.
2. Evaluation of financing options that do not include the sale of debt obligations.
3. Assistance with the evaluation of additional financing team professionals.
4. Suggestion of an investment strategy for the issuer's idle funds.
5. Creation of a detailed schedule of events for the issuer's financing programs.
6. Assistance in the acquisition of security/credit enhancement products and evaluation of the cost to benefit relationship of credit enhancement.
7. Coordinate those necessary activities of a legal nature with the City's designated bond counsel.

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City shall provide all necessary information to the Contractor for timely completion of the tasks specified in Item 1.1 above.
- C. All documents including but not limited to data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Contractor.

2.0 BILLING RECORDS, AUDIT, FEES**2.1 BILLING RECORDS, AUDIT**

The time spent for each task shall be recorded and submitted to the Contract Administrator. Contractor shall maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and make such materials available at all reasonable times during the Contract period for audit by the City pursuant to Section 4.7 of this Contract.

2.2 FEE SCHEDULE

Contractor shall be paid according to the following schedule:

General Obligation	\$0.95/\$1,000 for the first \$50,000,000; plus \$0.75/\$1,000 thereafter (\$15,000 minimum; \$75,000 maximum)
Street and Highway User Revenue	\$0.95/\$1,000 for the first \$50,000,000; plus \$0.75/\$1,000 thereafter (\$15,000 minimum; \$75,000 maximum)
Revenue (Water, MPC, SPA)	\$1.10/\$1,000 for the first \$25,000,000; plus \$0.95/\$1,000 from \$26,000,000 through \$50,000,000; and \$0.75/\$1,000 thereafter (\$20,000 minimum; \$80,000 maximum)
Improvement District/ Community Facilities District	\$1.50/\$1,000 for the first \$25,000,000; plus \$1.25/\$1,000 from \$26,000,000 through \$50,000,000; and \$1.00/\$1,000 thereafter (\$25,000 minimum; \$70,000 maximum)
Refunding Bonds	\$1.50/\$1,000 for the first \$25,000,000; plus \$1.25/\$1,000 from \$26,000,000 through \$50,000,000; and \$0.75/\$1,000 thereafter (\$20,000 minimum; \$85,000 maximum)

For other financial advisory services provided outside the requested Scope of Services:

Advisory Fee	\$175.00 per hour	Vice President and Above
	\$ 90.00 per hour	Associate/Administrative Assistant

Incidental expenses related to the bond issue will include such fees for service as bond counsel, official statement and bond printing and mailing, rating agency fees, trustee/ bond registrar and payment agent, and verification of other consultant services as required.

Contractor may submit work in progress billings for services rendered together with applicable documentation as directed by the Contract Administrator.

2.3 PAYMENT APPROVAL

Contractor shall submit to the Contract Administrator for approval, any out-of-pocket travel or other incidental expenses to be billed to the City. Absent significant out-of-town travel, the total amount of reimbursement expenses shall not exceed \$1,000 for each bond issue.

Amounts indicated in Section 2.2 represent the entire amounts payable under this Contract. Additional expenses will not be authorized.

All charges must be approved by the Contract Administrator prior to payment.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

This Contract shall expire on APRIL 30, 2008.

3.2 TERMINATION

Termination for Convenience: City reserves the right to terminate this contract or any part hereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Consultant shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and Subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the Consultant shall receive a fee for the percentage of services actually completed. This fee shall be in the amount to be mutually agreed upon by the Consultant and the City, based on the agreed Scope of Work. If there is no mutual agreement, the Contract Administrator shall determine the percentage of completion of each task detailed in the Scope of Work and the Consultant's compensation shall be based upon such determination. The City shall make this final payment within sixty (60) days after the Consultant has delivered the last of the partially completed items. Consultant shall not be paid for any work done upon receipt of the notice of termination, nor for any costs incurred by Consultant's suppliers or Subcontractors, which Consultant could reasonably have avoided.

Termination for Cause: City may also terminate this Contract or any part hereof with seven (7) days notice for cause in the event of any default by the Consultant, or if the Consultant fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance as judged by the Contract Administrator, and failure to provide City, upon request, with adequate assurances of future performance shall all be causes allowing City to terminate this Contract for cause.

In the event of termination for cause, City shall not be liable to Consultant for any amount, and Consultant shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.

In the event Consultant is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this Contract immediately upon giving notice to the Consultant.

3.3 FUNDS APPROPRIATION

If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice pursuant to Section 4.11 of termination to the Consultant at least thirty (30) days prior to the end of its current fiscal period and will pay to the Consultant all approved charges incurred through the end of such period.

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract shall be governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the Purchasing Director and Contract Administrator.

4.5 SUCCESSORS AND ASSIGNS

This Contract shall extend to and be binding upon Consultant, its successors and assigns, including any individual, company, partnership or other entity with or into which Consultant shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which Consultant shall sell its assets.

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City shall be Rebecca Eickley or designee. The Contract Administrator shall oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, and approve payments. The Consultant shall channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this Contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the Contract. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this Article throughout the term of this Contract and for a period of three years after last or final payment.

Consultant shall require all Subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Article by insertion of the requirements hereof in a written contract agreement between Consultant and payee. Such requirements will also apply to any and all Subcontractors,

If an audit in accordance with this article, discloses overcharges, of any nature, by the Consultant to the City in excess of one percent (1%) of the total Contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The City may cancel any Contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from the City is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).

4.12 NOTICES

All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Consultant:
US Bancorp Piper Jaffray
William C. Davis
At the Esplanade
2525 E. Camelback Road, Suite 900
Phoenix, Arizona 85016-9417

Telephone: (602) 808-5428

In the case of City:

City of Scottsdale
Financial Services Department
Rebecca Eickley
7447 E. Indian School Road, Suite 210
Scottsdale, AZ 85251

Telephone: (480) 312-7084

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

4.13 FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

4.14 TAXES

Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultants performance of this Contract. The City shall have no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without prior written approval of such advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This Contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

During the performance of the Contract, the Consultant may engage such additional Subcontractors as may be required for the timely completion of this Contract. The addition of any Subcontractors shall be subject to the prior approval of the City.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Consultant.

4.19 INDEMNIFICATION

To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.20 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the Contract. If such changes increase or decrease the amount due under the Contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by written Change Order.

4.20 CHANGES IN THE WORK (Continued)

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work-related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.21 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

5.0 INSURANCE

This Contract contains two samples of Certificates of Insurance, the Standard ACORD Certificate and the Certificate developed by the City of Scottsdale.

The City Certificate is preferred, however, the ACORD Certificate is acceptable provided it is identical to the sample attached and contains the additional language and deleted language as reflected on the sample.

Failure to provide a Certificate of Insurance with the appropriate verbiage as indicated on the attached samples, will result in rejection of your certificate and delay in Contract execution.

Additionally, Certificates of Insurance submitted without referencing an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

5.1.1 General: Consultant agrees to comply with all applicable City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City of Scottsdale. Failure to maintain insurance as specified may result in termination of this Contract at City of Scottsdale's option.

5.1.2 No Representation of Coverage Adequacy: By requiring insurance herein, City of Scottsdale does not represent that coverage and limits will be adequate to protect Consultant. City of Scottsdale reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

- 5.1.3 Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject Contract are satisfactorily performed, completed and formally accepted by the City of Scottsdale, unless specified otherwise in this Contract.
- 5.1.4 Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services as evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
- 5.1.5 Policy Deductibles and or Self-Insured Retentions: The policies set forth in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant shall be solely responsible for any such deductible or self-insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors: If any work under this Contract is subcontracted in any way, Consultant shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting City of Scottsdale and Consultant. Consultant shall be responsible for executing the Contract with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance: Prior to commencing any work or services under this Contract, Consultant shall furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage and that such coverage and provisions are in full force and effect.

If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the cited policies expire during the life of this Contract, it shall be Consultant's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions.

Certificates shall specifically cite the following provisions:

1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Excess Liability - Follow Form to underlying insurance as required.
2. Consultant's insurance shall be primary insurance as respects performance of subject Contract.

Evidence of Insurance – Continued

3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this Contract.
4. Certificate shall cite 30-day advance notice of cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

5.2 Required Coverage

- 5.2.1 **Commercial General Liability:** Consultant shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Completed Operations Annual Aggregate, and a \$1,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.
- 5.2.2 **Professional Liability:** If the Contract is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims.
- 5.2.3 **Vehicle Liability:** Consultant shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof.

If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.

- 5.2.4 **Workers Compensation Insurance:** Consultant shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and shall also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

6.2 AUTHORITY

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the City of Scottsdale by its Mayor and City Clerk have hereunto subscribed their names this ^{14th}~~15th~~ day of April, 2003.

CITY OF SCOTTSDALE

By: _____
Mary Manross, Mayor

ATTEST:

CONSULTANT:
US Bancorp Piper Jaffray

By: William C. Davis
William C. Davis, CFA
Managing Director

By: _____
Sonia Robertson, City Clerk

CITY CONTRACT ADMINISTRATOR

By: Rebecca A. Eickley
Rebecca Eickley
Finance and Energy Manager

CITY OF SCOTTSDALE REVIEW:

Monroe C. Warren
Monroe C. Warren
Purchasing Director
Myron J. Kuklok
Myron Kuklok
Risk Management Director

APPROVED AS TO FORM:

David A. Pennartz
David A. Pennartz
City Attorney

CITY COUNCIL REPORT



MEETING DATE: 04/14/2003 ¹⁵ ITEM No. 12 GOAL: Fiscal Management

SUBJECT Authorize Professional Services Agreement No. 2003-048-COS for Bond Counsel

REQUEST That the City Council authorize the Mayor to sign Professional Services Agreement No. 2003-048-COS with Snell & Wilmer for Bond Counsel for financings to include Improvement Districts (IDs), General Obligation (GO) Bonds, Water and Sewer Revenue (W & S) Bonds, Highway User Revenue Fund (HURF) Bonds, Municipal Property Corporation (MPC) Bonds, and Scottsdale Preserve Authority (SPA) Bonds.

BACKGROUND The current Professional Services Agreements for Bond Counsel will expire on April 30, 2003; therefore Financial Services staff initiated a Request for Proposal (RFP) in order to canvas the financial community for renewal of this Agreement. Responses to the RFP were received at 3:30 p.m. on February 27, 2003.

ANALYSIS & ASSESSMENT Proposals were received from the following firms:

- (1) Greenberg Traurig
- (2) Gust Rosenfeld
- (3) Kutak Rock
- (4) Snell & Wilmer
- (5) Squire, Sanders & Dempsey

The recommended firm was selected on the basis of staff review of 5 primary evaluation criteria which included

- qualifications of the firm,
- qualifications of the team,
- municipal bond counsel experience,
- responsiveness,
- cost.

The team also evaluated 15 sub-criteria. All 5 proposals met the City's requirements, and all 5 firms demonstrated that they are highly qualified. After careful review, the evaluation team scored Snell & Wilmer highest primarily due to the qualifications of the firm, their experience with Arizona municipalities, and their current knowledge of Scottsdale.

Previously, the City had two contracts for Bond Counsel. The current recommendation is for one contract to include all the bond types issued by the City. Community Facilities District (CFD) Bonds, which are issued by a separate legal entity, would be bid as needed.

RESOURCE IMPACTS

Awarding of the Professional Services Agreement for Bond Counsel will provide the necessary legal services for future bond issues and other financings.

There are no annual retainer costs involved in this Agreement. The professional fees and expenses are paid as part of the cost of issuance at the time of sale of a specific bond issue.

Snell & Wilmer's fee for fixed rate General Obligation, Street and Highway User Revenue, and Water and Sewer Revenue issues sold by competitive bid and authorized at a previous bond election is \$0.35 per \$1,000 of bonds per issue with a minimum fee of \$5,000 and a maximum fee of \$25,000 for any one bond issue.

For GO, HURF, and W & S bonds that require an election, the fee is \$0.45 per \$1,000 of bonds.

The fee for MPC, SPA, lease purchases, certificates of participation, variable rate or refunding bonds is \$1.00 per \$1,000 of bonds per issue for the first \$40,000,000 of bonds issued with a minimum fee of \$15,000 per issue. The fee per bond amount declines after the first \$40,000,000.

For Improvement District Bonds the fee is \$3,000 per issue plus \$2.00 per \$1,000 of bonds issued in excess of \$1,000,000.

For other legal services provided outside the requested Scope of Services, the hourly rate is 10% less than the then-current standard hourly rate for the attorneys providing the service.

**OPTIONS & STAFF
RECOMMENDATION**

Not approving Professional Services Agreement No. 2003-048-COS would require the City to separately hire a Bond Counsel for every bond issuance.


RESPONSIBLE DEPT(S)

Financial Services Department
Administration Division

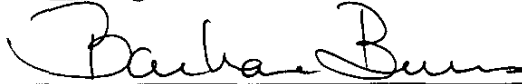
STAFF CONTACTS

Rebecca A. Eickley, Finance and Energy Manager, (480) 312-7084
reickley@ci.scottsdale.az.us

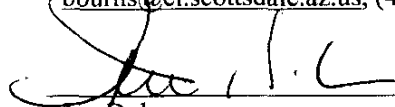
APPROVED BY


Craig Clifford
Financial Services General Manager
cclifford@ci.scottsdale.az.us, (480) 312-2364

3/25/03
Date


Barbara Burns
Assistant City Manager
bburns@ci.scottsdale.az.us, (480) 312-2599

3/26/03
Date


Jan Dolan
City Treasurer
jdolan@ci.scottsdale.az.us, (480) 312-2422

3/26/03
Date

ATTACHMENTS

1. Professional Services Agreement No. 2003-048-COS



**CITY OF SCOTTSDALE
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT, made and entered into this ^{15th} day of April, 2003, by and between the City of Scottsdale, a Municipal Corporation of the State of Arizona hereinafter referred to as "City", and Snell & Wilmer L.L.P, a Limited Liability Partnership of the State, hereinafter referred to as "Contractor".

WITNESSETH

THAT, the Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute contracts for professional services;

WHEREAS, the City desires to contract for BOND COUNSEL;

WHEREAS, Contractor is duly qualified to perform the requested services;

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Contractor shall act under the authority and approval of the Contract Administrator for the City, further named herein, to provide the professional services required by this Contract.

1.1 SERVICE DESCRIPTION

The Contractor shall assist the City's bond counsel on all items of financing necessary to its operations including, but not limited to general obligation, street and highway, water and sewer revenue, Municipal Property Corporation, Scottsdale Preserve Authority, community facilities district, and improvement district bonds and other related financial services.

The firm shall provide bond counsel services including, but not limited to:

A. For Each Debt Issue

1. Draft the bond election propositions, the authorizing documents, bond proceedings, bond legal opinions, and closing documents.

A. For Each Debt Issue (Continued)

2. Work with the financial advisor in the drafting of the bond ballot propositions and related legal documents.
3. Provide advice as may be required to the Mayor and Council, staff, citizen committees, and others.
4. Prepare all bond closing documents and coordinate bond closings.
5. Provide advice to the City on matters relating to the bonds and financings during intervals between bond sales.
6. Work with the financial advisor on creation and discussion of structuring alternatives within the confines of the market, acceptable risk and legal constraints.
7. Work with the financial advisor on recommendation of the trust, registrar, and paying agent.
8. Work with the financial advisor on preparation of the Official Statement.
9. Coordinate those necessary activities of a legal nature with the financial advisor.
10. Deliver the firm's legal opinion as to:
 - a. valid issuance of the evidence of indebtedness;
 - b. federal and state tax status of the interest income earned by holders of the instrument; and
 - c. validity and enforceability of underlying documentation.
11. Advise the City as to the proper procedure for compliance with state open meeting laws and federal public hearing criteria.

B. General Services

1. Provide services of a general legal nature pertaining to all facets of City bond issues.
2. Provide legal advice relative to financing options that do not include the sale of debt obligations.
3. Work with the financial advisor on creation of a detailed schedule of events.
4. Coordinate those necessary activities of a legal nature with the financial advisor.

C. For Improvement Districts

1. Prepare and review of all legal proceedings as the District Counsel.

C. For Improvement Districts (Continued)

2. Review of all actions taken by City staff and the City Council with respect to the following:
 - (1) initiation of the improvement district;
 - (2) protests and objections;
 - (3) adopting the Resolution Ordering the Work and calling for construction bids;
 - (4) awarding the construction contract;
 - (5) rulings on objections to the award of contract;
 - (6) calling for bids on the bonds and awarding the contract for the purchase of bonds; and
 - (7) processing the assessment, the warrant, the return and the certified list;
3. Draft the notice inviting proposals for purchase of the bonds in conjunction with the City's financial advisor;
4. Assist the financial advisor in preparing official statements, if deemed necessary; and
5. Assist the Council and staff in evaluating objections to the assessment, preparing necessary responses to objections and determining if modifications of the assessment are advisable; this includes appearing at the hearing on the assessment if objections have been filed.

In addition to the foregoing, the Bond Counsel would be "on call" with respect to any questions which come up during the pendency of the improvement district proceedings or during the collection period (i.e., the full term of the bonds) to answer questions on such things as modifications of assessments, notices of delinquencies, timing with respect to mailing notices of assessment installments, notices of delinquencies, publishing notices of delinquencies and holding Superintendent of Streets' sales.

In addition to the above-stated services, the Bond Counsel will defend suits regarding the "spread" of assessments, if requested to do so by the Council; however, if the Bond Counsel undertakes such representation, the Bond Counsel will charge at the usual hourly rates because it is not within the scope of work

1.2 ACCEPTANCE AND DOCUMENTATION

- A. Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.
- B. The City shall provide all necessary information to the Contractor for timely completion of the tasks specified in Item 1.1.

1.2 ACCEPTANCE AND DOCUMENTATION (Continued)

- C. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Contractor.

2.0 BILLING RECORDS, AUDIT, FEES**2.1 BILLING RECORDS, AUDIT**

The time spent for each task shall be recorded and submitted to the Contract Administrator. Contractor shall maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and make such materials available at all reasonable times during the Contract period for audit by the City pursuant to Section 4.7 of this Contract.

2.2 FEE SCHEDULE

Contractor shall be paid according to the following schedule:

Fixed-Rate General Obligation, Street and Highway or Water Revenue Bonds authorized by previous bond election and sold by competitive bid.	\$0.35/\$1,000 of bonds issued, with a \$5,000 minimum; \$25,000 maximum for any one bond issue.
Fixed-Rate General Obligation, Street and Highway or Water Revenue Bonds requiring a new bond election and sold by competitive bid.	\$0.45/\$1,000 of bonds issued, with a \$7,500 minimum for the first sale from each voted authorization.
General Obligation, Street and Highway or Water Revenue bonds sold on negotiated basis.	120% of the applicable fee for bonds sold by competitive bid.
MPC, SPA, lease-purchase, certificate of participation variable rate, tender option or refunding bonds.	\$1.00/\$1,000 of bonds for any issue for the first \$40,000,000 with a \$15,000 minimum; \$0.50/\$1,000 for the next \$60,000,000; \$0.25/\$1,000 for bonds in excess of \$100,000,000.
Improvement District bonds	\$3,000 per issue plus \$2.00 per \$1,000 in excess of \$1,000,000.

For services not associated with a financing transaction, fees shall be not greater than 90% of the customary hourly rates of the attorneys performing the service. The attorneys currently providing services to the City, and their current customary and discounted rates, are as follows:

<u>Name</u>	<u>Customary Rate</u>	<u>Discounted Rate</u>
William A. Hicks, III	\$395	\$275
Timothy E. Pickrell	\$340	\$275
Amy E. Hinderer	\$185	\$165
Michele L. Stevenson	\$160	\$140

2.2 FEE SCHEDULE (Continued)

Hourly rates are subject to adjustment annually. Contractor may submit work in progress billings for services rendered together with applicable documentation as directed by the Contract Administrator.

2.3 PAYMENT APPROVAL

Contractor shall submit to the Contract Administrator for approval, any out-of-pocket travel or other incidental expenses to be billed to the City. Absent significant out-of-town travel and computer-assisted research, the total amount of reimbursement expenses shall not exceed \$1,000 for any single issue.

Amounts indicated in Section 2.2 represent the entire amounts payable under this Contract. Additional expenses will not be authorized.

All charges must be approved by the Contract Administrator prior to payment.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

This Contract shall expire on APRIL 30, 2008.

3.2 TERMINATION

Termination for Cause: City may also terminate this contract or any part hereof with seven (7) days notice for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any of the terms and conditions of this contract. Unsatisfactory performance as judged by the Contract Administrator, and failure to provide City, upon request, with adequate assurances of future performance shall all be causes allowing City to terminate this contract for cause. In the event of termination for cause, City shall not be liable to Contractor for any amount, and Contractor shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.

In the event Contractor is in violation of any Federal, State, County or City law, regulation or ordinance, the City may terminate this contract immediately upon giving notice to the Contractor.

3.3 FUNDS APPROPRIATION

If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice pursuant to Section 4.11 of termination to the Contractor at least thirty (30) days prior to the end of its current fiscal period and will pay to the Contractor all approved charges incurred through the end of such period.

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

4.2 ARIZONA LAW

This Contract shall be governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract.

4.4 ASSIGNMENT

Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the Purchasing Director and Contract Administrator.

4.5 SUCCESSORS AND ASSIGNS

This Contract shall extend to and be binding upon Contractor, its successors and assigns, including any individual, company, partnership or other entity with or into which Contractor shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which Contractor shall sell its assets.

4.6 CONTRACT ADMINISTRATOR

The Contract Administrator for the City shall be Rebecca Eickley or designee. The Contract Administrator shall oversee the execution of this Contract, assist the Contractor in accessing the organization, audit billings, and approve payments. The Contractor shall channel reports and special requests through the Contract Administrator.

4.7 RECORDS AND AUDIT RIGHTS

Contractor's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Contractor or any of his payees pursuant to the execution of the contract. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Contractor's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

4.7 RECORDS AND AUDIT RIGHTS (Continued)

Contractor shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Contractor and payee. Such requirements will also apply to any and all subcontractors,

If an audit in accordance with this article, discloses overcharges, of any nature, by the Contractor to the City in excess of one percent (1%) of the total contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.

4.8 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

4.9 INELIGIBLE BIDDER

The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which they prepared the specification, nor is the preparer eligible to supply any product to a bidder or offeror on the solicitation for which they prepared the specification.

4.10 INDEPENDENT CONTRACTOR

The services Contractor provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

4.11 CONFLICT OF INTEREST

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the City is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. §38-511).

4.12 NOTICES

All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Contractor:

Snell & Wilmer L.L.P.
William A. Hicks, III
One Arizona Center
Phoenix, AZ 85004-2202

Telephone (602) 382-6303

In the case of City:

City of Scottsdale
Financial Services Department
Rebecca Eickley
7447 E. Indian School Road, Suite 210
Scottsdale, AZ 85251

Telephone: (480) 312-7084

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

4.13 FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

4.14 TAXES

Contractor shall be solely responsible for any and all tax obligations which may result out of the Contractor's performance of this contract. The City shall have no obligation to pay any amounts for taxes, of any type, incurred by the Contractor.

4.15 ADVERTISING

No advertising or publicity concerning the City using the Contractor's services shall be undertaken without prior written approval of such advertising or publicity by the City Contract Administrator.

4.16 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

4.17 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.18 SUBCONTRACTORS

During the performance of the Contract, the Contractor may engage such additional Subcontractors as may be required for the timely completion of this Contract. The addition of any Subcontractors shall be subject to the prior approval of the City.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Contractor.

4.19 INDEMNIFICATION

Contractor, its successors and assigns agree to defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against any and all suits, actions, claims, proceedings, judgments, damages, losses, costs and expenses, including reasonable attorney's fees and court costs (i) arising from any claim or allegation that the City was negligent in retaining and/or engaging Contractor or (ii) incurred by the City as a result, and only to the extent, of Contractor's professional negligence in the performance of this Contract, provided that the City gives to Contractor written notice of any such claim for indemnity and an opportunity to defend within ninety (90) days following the earlier of City's receipt of any such claim or allegation or City's becoming aware of any such professional negligence.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

4.20 CHANGES IN THE WORK

The City may at any time, as the need arises, order changes within the scope of the work without invalidating the contract. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by written Change Order.

The City will execute a formal Change Order based on detailed written quotations from the Contractor for work related changes and/or a time of completion variance. All Change Orders are subject to approval by the City.

Contract Change Orders are subject to the Rules and Procedures within the City's Procurement Code.

4.21 CO-OP USE OF CONTRACT

In addition to the City of Scottsdale, this Contract may be extended for use by other municipalities, government agencies and governing bodies, including the Arizona Board of Regents, and political subdivisions of the State. Any such usage by other entities may

4.21 CO-OP USE OF CONTRACT (Continued)

be in accord with the ordinances, charter and/or rules and regulations of the respective entity and the approval of the Contractor.

5.0 INSURANCE

This contract contains two samples of Certificates of Insurance, the Standard ACORD Certificate and the Certificate developed by the City of Scottsdale.

The City Certificate is preferred, however, the ACORD Certificate is acceptable provided it is identical to the sample attached and contains the additional language and deleted language as reflected on the sample.

Failure to provide a Certificate of Insurance with the appropriate verbiage as indicated on the attached samples, will result in rejection of your certificate and delay in contract execution.

Additionally, Certificates of Insurance submitted without references to an RFP and Contract number will be subject to rejection and returned or discarded.

5.1 Insurance Representations and Requirements

- 5.1.1 General: Contractor agrees to comply with all City ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City of Scottsdale. Failure to maintain insurance as specified may result in termination of this Contract at City of Scottsdale's option.

- 5.1.2 No Representation of Coverage Adequacy: By requiring insurance herein, City of Scottsdale does not represent that coverage and limits will be adequate to protect Contractor. City of Scottsdale reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

- 5.1.3 Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the City of Scottsdale, unless specified otherwise in this Contract.

- 5.1.4 Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the two year period.

5.1 Insurance Representations and Requirements (Continued)

- 5.1.5 Policy Deductibles and or Self-Insured Retentions: The policies set forth in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to City of Scottsdale. Consultant shall be solely responsible for any such deductible or self-insured retention amount. City of Scottsdale, at its option, may require Consultant to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 5.1.6 Use of Subcontractors: If any work under this agreement is subcontracted in any way, Consultant shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting City of Scottsdale and Consultant. Consultant shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 5.1.7 Evidence of Insurance: Prior to commencing any work or services under this Contract, Consultant shall furnish City of Scottsdale with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage's, conditions, and limits of coverage and that such coverage and provisions are in full force and effect.

If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the above cited policies expire during the life of this Contract, it shall be Consultant's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

1. City of Scottsdale, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies:
 - a. Commercial General Liability
 - b. Auto Liability
 - c. Excess Liability – Follow Form to underlying insurance as required.
2. Contractor's insurance shall be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance, if applicable, waive rights of recovery (subrogation) against City of Scottsdale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Consultant under this contract.
4. Certificate shall cite 30-day advance notice of cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

5.2 Required Coverages

5.2.1 Commercial General Liability: Contractor shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Completed Operations Annual Aggregate, and \$1,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader to coverage scope then underlying.

5.2.2 Professional Liability: If the Contractor is the subject of any professional services or work, or if Consultant engages in any professional services or work adjunct or residual to performing the work under this Contract, Consultant shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims.

5.2.3 Vehicle Liability: Consultant shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof.

If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope then underlying.

5.2.4 Worker's Compensation Insurance: Consultant shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less then \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

6.0 SEVERABILITY AND AUTHORITY

6.1 SEVERABILITY

If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

6.2 AUTHORITY

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the City of Scottsdale by its Mayor and City Clerk have hereunto subscribed their names this ^{15th} 14th day of April, 2003.

CITY OF SCOTTSDALE

By: _____
Mary Manross, Mayor

ATTEST:

CONTRACTOR:
Snell & Wilmer L.L.P.

By: _____
Sonia Robertson, City Clerk

By: William A. Hicks III
William A. Hicks III

CITY CONTRACT ADMINISTRATOR

By: Rebecca A. Eickley
Rebecca Eickley
Finance and Energy Manager

CITY OF SCOTTSDALE REVIEW:

Monroe C. Warren
Monroe C. Warren
Purchasing Director

Myron J. Kuklok
Myron Kuklok
Risk Management Director

APPROVED AS TO FORM:

David A. Pennartz
David A. Pennartz
City Attorney

CITY COUNCIL REPORT



MEETING DATE: 04/14/03

ITEM NO.

13

GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT

Adoption of Notice of Intention to increase water and wastewater rates and establishment of May 19, 2003 as the date for a public hearing.

REQUEST

Adopt Notice of Intention to set water and wastewater rates for Fiscal Year 2003/2004 and to establish May 19, 2003 as the date for a public hearing.

BACKGROUND

Financial Plan: The City of Scottsdale sets water and wastewater rates based on the five-year Water Resources financial plan for the water and wastewater funds. Consistent with the existing five-year financial plan, revenue increases of 3.0% for water effective November 1, 2003 and 2.5% for wastewater effective July 1, 2003 are proposed. The proposed increase for water includes the impacts of arsenic regulations enacted by the U.S. Environmental Protection Agency (EPA) as well as pending disinfection by-product regulations proposed by the EPA. The wastewater rate increase relates to the operating and capital costs associated with the Multi-City 91st Avenue Wastewater Treatment Plant to serve existing customers' wastewater treatment needs. The wastewater rate increase is also impacted by Scottsdale's proportionate share of the rehabilitation costs of the jointly-owned Salt River Outfall pipe, which transmits the City's wastewater to the 91st Avenue Plant.

State Public Notification Process: State statutes establish the public notice and public hearing process to ensure that City water and wastewater customers receive adequate notice time, ability to study the rate report supporting the proposed rate increases, and the opportunity to speak at a public hearing regarding the proposed increases. State statute requires the:

- Adoption of a notice of intention at a regular council meeting (April 14) and setting of a date for a public hearing on the proposed increase to be held not less than 30 days after adoption of the notice of intention (May 19)
- Posting of a written report or data supporting the increases with the City Clerk at least 30 days prior to the public hearing (April 14)
- Publication of a notice of public hearing regarding City's intention to increase rates in a newspaper of general circulation within the boundaries of the municipality not less than 20 days prior to the public hearing date (April 25)
- Conduct of a public hearing at a Council Meeting (May 19)
- Adoption of the proposed rate increases anytime after the public hearing (May 19)

Action Taken _____

- Implementation of increases no sooner than 30 days after adoption (proposed wastewater rate increases effective July 1 and proposed water rate increases effective November 1)

The action recommended at tonight's meeting is adoption of notice of intention and establishment of a public hearing date.

ANALYSIS & ASSESSMENT

The City prepares and annually updates a comprehensive fifteen-year Water Resources financial plan. This plan incorporates all projected operating and capital expenses and revenues of the Water and Sewer Funds for the fifteen-year period and establishes the cash needs for the period. Potential financing sources, including rates, development fees, interest earnings, and debt, are evaluated in the planning process. Based on the current financial plan which incorporates rate stabilization over the five-year period through 2007/08, the City is proposing increasing existing water rate revenues by 3% to address EPA water quality regulatory requirements related to arsenic and disinfection by-products. The City is also proposing a 2.5% increase in existing sewer rates to accommodate increased operating and capital costs associated with the Multi-City 91st Avenue Wastewater Treatment Plant and related facilities to accommodate existing customers' wastewater treatment needs. Tonight's proposed adoption of a notice of intention to increase rates and establishment of a date for a public hearing is the first step in the State's public notification process related to proposed water and sewer rate increases.

RESOURCE IMPACTS

There is no fiscal impact associated with this action as it involves only public notice and scheduling a public hearing. Should the Council adopt the proposed increases, it is estimated they will generate water rate revenues of approximately \$2.0 million and sewer rate revenues of approximately \$0.6 million for fiscal year 2003/04.

OPTIONS & STAFF RECOMMENDATION

Description of Option A:

Adopt notice of intention and set date for public hearing in order to proceed with proposed rate increases.

Description of Option B:

If the notice of intention, including setting public hearing date, is not adopted, existing water rates effective November 1, 2002 and sewer rates effective July 1, 2002 will remain in place.

RESPONSIBLE DEPT(S)

Water Resources, Financial Services

STAFF CONTACT(S)

David M. Mansfield, Water Resources General Manager, (480) 312-5681, dmansfield@ScottsdaleAz.gov

APPROVED BY




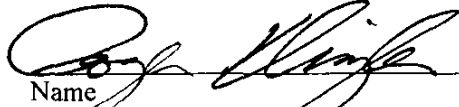
Name

4-1-03

Date

David M. Mansfield, Water Resources General Manager, (480) 312-5681, dmansfield@ScottsdaleAz.gov

 4/1/03
Name Date
Craig Clifford, Financial Services General Manager, (480) 312-2364,
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Name Date
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ATTACHMENTS

1. Draft – Proposed Legal Notice of Public Hearing
2. Draft – Water and Wastewater Rate Report 2003-04

ATTACHMENTS

1. Draft – Proposed Legal Notice of Public Hearing
2. Draft – Water and Wastewater Rate Report 2003-04

DRAFT - LEGAL NOTICE

**CITY OF SCOTTSDALE
NOTICE OF PUBLIC HEARING REGARDING
CITY'S INTENTION TO INCREASE
WATER AND WASTEWATER RATES**

The City of Scottsdale hereby gives notice pursuant to Arizona Revised Statute section 9-511.01 of a public hearing to be held at the regularly scheduled City Council meeting on **May 19, 2003 at 5:00 p.m.** in the Kiva in City Hall, 3939 Drinkwater Boulevard, Scottsdale, Arizona in connection with the City's intention to consider an ordinance increasing water and wastewater rates for City water and wastewater service for fiscal year 2003/04. At the hearing, the City will accept oral and written comments concerning the proposed water and wastewater rate ordinance. A report, including documentation supporting the increase, is available at the City Clerk's office.

Publish April 25, 2003

DRAFT



**City of Scottsdale
Water and Wastewater
Rate Report**

Fiscal Year 2003-04

*Prepared by:
City of Scottsdale Financial Services Staff
Posted April 14, 2003*

TABLE OF CONTENTS

I	Introduction	1
II	Background	2
III	Financial Planning	5
IV	Five-Year Financial Plan	10

I

Introduction

The City of Scottsdale (City) proposes a 2.5% sewer rate increase effective July 1, 2003, and a 3% water rate increase effective November 1, 2003.

The following report is prepared in compliance with Arizona Revised Statutes, which require that a written report supporting the increased rate be prepared and made available to the public at least thirty days prior to public hearing. A public hearing regarding the proposed rate increases is scheduled for May 19, 2003. This report consists of four sections

- **Introduction:** This section provides an overview of the factors behind the need for the rate increase.
- **Background:** This section describes major factors affecting operations and capital costs and major water and sewer rate-funded capital projects.
- **Financial:** This section discusses City's financial planning objectives and includes a description of the sources and uses of funds.
- **Five-Year Financial Plan:** This section contains the detailed financial plan including five-year projections of capital expenditures by revenue source.

Water and sewer rates recover the on-going operations, maintenance and capital costs of the water and sewer systems. These systems have combined capital assets of approximately \$799 million as of June 30, 2002. Water and sewer rates also recover the operations and capital costs to comply with mandated regulations affecting the existing water and sewer systems.

The City of Scottsdale faces approximately \$100.6 million in capital costs to comply with promulgated and pending United States Environmental Protection Agency ("EPA") regulations impacting the water system. The City must comply with the mandated EPA Arsenic Rule requiring a decrease in the maximum contaminant level of arsenic in potable water from 50 parts per billion (ppb) to 10 ppb by January 2006. Although the City currently meets Stage 1 requirements of the Disinfectants and Disinfection By-products Rule (DBP), Stage 2 of the Rule is currently in draft form and will be effective three years after promulgation. Stage 2 further lowers allowable levels of DPB from 100 ppb to 80 ppb and requires that the new standard be met at specific monitoring sites in contrast to the currently allowed system-wide average. DBP's are formed as a result of drinking water disinfectants (chlorine) in the presence of organic matter and increase over time. The City's sources of surface water, The Arizona and CAP Canals, contain naturally occurring organic matter. The City projects operating costs of up to \$5 million per year beginning in 2006/07 associated with these new regulatory requirements.

With respect to the sewer rate increase, the City faces additional operating and capital costs associated with the Multi-City 91st Avenue Wastewater Treatment Plant, including Scottsdale's proportionate share of the rehabilitation costs of the jointly owned Salt River Outfall pipe, which transmits the City's wastewater to the 91st Avenue Plant.

II Background

The City's Water Resources Department's mission is to "plan, manage and operate a safe, reliable water treatment and wastewater reclamation system and provide efficient, high quality customer service to Scottsdale residents."

In order to accomplish this mission, the City incurs costs related to the operation and construction of its water and wastewater systems. The following are some of the primary factors affecting the water and wastewater costs of operation and the capital program:

- Compliance with the Groundwater Management Act - With the passage of the Arizona Groundwater Management Act (GMA) in 1980, the Phoenix Active Management Area was created to reduce groundwater withdrawals to a point where "safe-yield" is achieved by year 2025. "Safe-yield" is achieved when the groundwater withdrawals equal the amount of groundwater that is naturally or artificially recharged, i.e. zero groundwater mining. The GMA also requires the City to demonstrate a 100-year Assured Water Supply for existing committed and future demand. This impacts costs in three ways:
 - Source of supply – additional water supplies will be obtained and include surface water purchases / leases and/or groundwater recharge in compliance with the GMA
 - Treatment - surface and reclaimed water require more treatment than groundwater and
 - Distribution - increased distribution system is required when treatment is from a central facility rather than from local wells.
- Compliance with federal and state water quality standards - The Safe Drinking Water Act and the Clean Water Act set the standards for water treatment/delivery and wastewater treatment/collection, respectively. As the level of these standards has become more stringent, the City's compliance costs have also increased. Most recently, the EPA's Arsenic Rule and pending Disinfection By-Product regulation have caused a major escalation of costs for both capital improvements and future operating costs.
- Population disbursement over broad and varying terrain - The City's population is distributed over 185 square miles. The water system includes 15 service zones due to mountainous terrain. Elevations increase over 2,300 feet, rising generally from the south to the north and east, greatly affecting electricity, maintenance, and distribution costs.
- Major Water Capital Projects
 - Chaparral Water Treatment Plant (WTP) – The City of Phoenix currently treats the City's allocation of Salt River Project (SRP) surface water at the City of Phoenix Verde Water Treatment Plant (Verde WTP) under terms of a purchased

water agreement. Because the City of Phoenix has sufficient capacity in new treatment plants, it will abandon the Verde WTP and will turn the plant over to the Salt River Indian Community. The City of Phoenix has notified the City of its intent to terminate the purchased water agreement with Scottsdale in 2005. Consequently, the City must complete the construction of the Chaparral (SRP) WTP in order to begin treating its SRP water supply in 2005. The Chaparral WTP is designed to treat 30 million gallons per day (mgd). Since the plant will serve primarily existing customers, water rates are the major funding source. The plant construction cost is estimated at approximately \$60.0 million over the next three years, \$22 million of which relates to disinfection by-product requirements.

- Water Quality Improvements – Southern Neighborhoods – The City's existing Central Groundwater Treatment Facility in the area of Thomas Road and Pima Road requires improvements to enhance the quality of potable water being produced at this site, by reducing nitrates, total dissolved solids and hardness. This project will also remedy the excessive scaling currently experienced. The improvements, which are projected to cost \$10 million, are funded primarily by water rates and are scheduled for completion in 2003.
- Arsenic Mitigation Program – The City must continue its reliance on groundwater for summer peak demand and drought protection. Because the majority of the City's groundwater supply resources exceed the new standard for arsenic, the City has incorporated the arsenic mitigation program into the 2003-08 Capital Improvement Program to ensure that the City's groundwater supply resources will be compliant with the Arsenic Rule by January 2006. The arsenic mitigation program will identify the most cost-effective method for treating the groundwater, assess land acquisition alternatives for planned well water treatment facilities, and secure contracts for the design and construction of these facilities. The estimated cost for this program is \$64.1 million through 2007/08. The program benefits existing customers and is funded primarily by water rates.
- Central Arizona Project Water Treatment Plant (CAP WTP) – The City will spend an estimated \$24 million for Granular Activated Carbon treatment at the CAP WTP through 2007/08 to address the pending EPA disinfection by-product regulations. \$16 million of capital cost is required to bring the existing plant into compliance and will be funded by water rates. Development fees fund the balance of \$8 million.

- Major Wastewater Capital Projects

- Water Campus Expansion - To meet increased wastewater demands, the City will incrementally expand the wastewater reclamation and advanced water treatment capacity at the Water Campus from the current plant capacity of 12 mgd to 24 mgd by 2020. Treated effluent from the Wastewater Reclamation Plant will either be used for irrigation purposes or will be further treated to drinking water standards through the Advanced Water Treatment Plant and used for groundwater recharge. The phasing of these incremental expansions is tied to Scottsdale's treatment capacity demands at the Multi-City 91st Avenue Wastewater Treatment Plant located in Phoenix. Phase III of the Water Campus, which will bring the plant capacities to 20 mgd, is scheduled for completion in 2005. Total projected Phase III cost for both plants is \$29.5

million. Sewer development fees and water resource development fees fund this project.

- Multi-City 91st Avenue Wastewater Treatment Plant – Existing Plant - The City's contribution to ongoing improvements to the existing Multi-City 91st Avenue Wastewater Treatment Plant is programmed for over \$38 million in the next five years. These improvements are funded by sewer rates.
- Multi-City 91st Avenue Wastewater Treatment Plant – Expanded Plant The City's contribution to expansion of the Multi-City 91st Avenue Wastewater Treatment Plant due to growth is projected at approximately \$33 million over the next five year period. Sewer development fees fund these expansion costs.

- Major Water Supply Acquisitions

- Gila River Indian Community (GRIC) Central Arizona Project (CAP) water lease - The City of Scottsdale is a party to the GRIC water rights settlement agreement. As a part of the Settlement Agreement, Scottsdale will lease 12,000 acre-feet of Indian CAP water from the GRIC, complementing its existing leases with the San Carlos Apache Tribe and Salt River Pima Maricopa Indian Communities. The term of the lease is for 100 years, and the lease is renewable. The leased water costs approximately \$18.5 million in today's dollars. Water resource development fees will fund this supply acquisition.
- Additional CAP municipal priority water - Implementation of the GRIC Settlement Agreement is contingent upon the passage of Federal authorizing legislation. In addition to authorizing the settlement, the legislation reallocates 65,000 acre-feet of currently uncontracted for CAP municipal priority water to cities throughout Arizona. Scottsdale will receive 2,981 acre-feet of this water to help meet its future water demands.

Because this water is not currently under contract, capital repayment charges have been accruing. CAP requires that any entity acquiring a CAP supply shall pay the accrued back capital charges. These charges are expected to be approximately \$600,000 on the settlement effective date. Again these charges will be funded by water resources development fees.

The Settlement Agreement and legislation are expected to become effective no later than January 1, 2007. Scottsdale is not required to expend any funds on the lease water or the reallocation water until the settlement becomes effective, at which time the water supplies are expected to become available.

III

Financial Planning

In conjunction with the budget process and based on the most current Water Resources Master Plans, the City develops and maintains a comprehensive fifteen-year Water Resources financial plan. The plan consists of projections of operating and capital costs of the Water and Wastewater systems, as well as projections of funding from user rates, development fees, bond issuances, interest earnings, intra-fund transfers, and existing cash balances of the funds. The plan also considers projected changes to three reserves: 1) the replacement and extension reserve required by bond indenture, 2) the operating reserve equal to 90 days of operating costs, and 3) the capital/rate stabilization reserve. The City updates the plan annually with actual revenues and expenses of the prior year and operating and capital projections for the following fifteen years. The City bases its water and sewer rate increases on the cash needs shown in the financial plan for the prospective five-year period, currently 2003/04 through 2007/08.

Water Resources financial planning objectives are:

- To maintain a comprehensive financial plan which incorporates all projected operating and capital expenses and revenues of the Water and Sewer Funds for the fifteen year period
- To maintain a minimum bond coverage ratio of 1.8
- To maintain replacement and extension reserves of 2% of nets assets in accordance with bond indenture requirements
- To provide an operating reserve equal to 90 days of operational needs
- To maintain a capital/rate stabilization reserve in order to fund the capital program and evenly distribute necessary operating rate increases over time to avoid a need for extreme rate increases in any one year
- To be conservative regarding the issuance of debt, and to comply with the City's pay-as-you-go funding policy
- To maintain and fund the water and wastewater funds as separate, self-sustaining enterprise funds
- To continue to develop a cost-based rate structure which encourages water conservation
- To maintain development fees which reflect current growth projections and capital needs so that growth is paying its proportionate share of these costs

The City accomplishes these objectives by:

- Periodic review of Water Resources Master Plans to ensure that planned infrastructure and water supply acquisitions continue to be adequate to meet growth projections and that the Water Resources Capital Improvement Program incorporates these needs
- Annual review and update of the financial plan to ensure that the plan reflects sufficient revenues to fund operating and capital cost projections, including the impact of any new state or federal regulations
- Annual bond coverage ratio update to ensure compliance with the minimum 1.8 bond coverage ration and bond indenture requirements
- Annual adjustment and biennial review of development fees. As a result of the “Fiscal Impact of Development Study” prepared for the City by Tischler and Associates in 1996, the City implemented a new development fee structure in January 1997 to ensure that development fees adequately pay for Water Resources expenditures related to new growth. These fees are adjusted annually and are comprehensively reviewed every two years. This consists of a review of demand generators, fixed assets, and construction costs of capital improvements required to meet projected demand. A biennial report is issued, and new fees are adopted. A comprehensive biennial review based on the September 2001 Master Plans was completed in 2002 with new fees effective July 15, 2002. These fees are proposed for adjustment by a 2.4% construction cost index with proposed effectivity date of July 1, 2003.

WATER RESOURCES FINANCIAL PLAN - 5 Year Summary

The following chart presents in tabular format the cash flows for the Water and Sewer Enterprise Funds. Following this chart are descriptions of the sources and uses of funds. Details by year are presented in Section IV.

Water and Wastewater Enterprise Funds Financial Plan Five-Year Summary Sources and Use of Funds 2003/04 through 2007/08 \$ In Millions

	Water Fund	Sewer Fund	Total
Sources of Funds			
Existing Cash*	\$ 101.35	\$ 21.88	\$ 123.24
Operating Revenues	364.37	140.86	505.22
Development Fees	47.37	43.23	90.60
Interest Earnings	5.17	1.68	6.86
New Bond Issues	100.60	18.40	119.00
Intra-fund Loans	(14.00)	14.00	-
Total Sources of Funds	604.86	240.05	844.91
Uses of Funds			
Operating Expenses & Transfers	(220.01)	(70.78)	(290.79)
Debt Service	(62.64)	(35.12)	(97.77)
Capital Improvements	(291.37)	(117.36)	(408.73)
Total Uses of Funds	(574.03)	(223.27)	(797.29)
Cash Balance at year end	\$ 30.84	\$ 16.78	\$ 47.62

*Cash balance at beginning of period

SOURCES OF FUNDS

(1) Existing cash balances - In this five-year plan previously accumulated cash balances will contribute to the total funding sources.

(2) Operating Revenues - These are charges for services provided to the customer, such as metered sales in the water fund or sewer service charges in the wastewater fund. Other revenues for services provided are account initiation fees, connection fees, unmetered sales fees, and penalties.

The proposed 3.0% water rate increase is projected to generate additional revenue of \$2.0 million for fiscal year 2003/04. The increase is applied to the base charge and to tier 1 and tier 2 consumption charges. Tier 1 rate will increase by \$0.04 per thousand gallons to \$1.32 effective 11/1/2003. Tier 2 rate will increase by \$0.07 per thousand gallons to \$2.40. Water Quality environmental charge of 2.677% is applied to each of these components. For a residential customer with 13,500 gallons of water use and a ¾" meter, the water bill will increase by \$1.18 to \$39.99 per month for 2003/04. The current financial plan projects a need for a 3% revenue increase for 2004/05 and a 2% increase per year from 2005/06 through 2007/08.

The proposed 2.5% sewer rate increase is projected to generate additional revenue of \$600,000 for fiscal year 2003/04. The increase, affecting all classes uniformly, will become effective July 1, 2003. For a residential customer in a single-family residence, with an average 8,000 gallons per month flow to the sewer, the monthly cost will increase by \$0.40 to \$17.15 per month. The current financial plan projects a need for a 2.5% increase for each year of the planning period through 2007/08.

(3) Development Fees - These fees are charges for the purpose of compensating the City for the additional costs of infrastructure or water purchases incurred by development. The City currently charges:

- water development fees for the cost of new water treatment, production, pumping, storage and transmission facilities required by developments
- sewer development fees for the cost of wastewater capital expansion for enlargement of the publicly owned treatment works and the wastewater collection system
- water resource development fees for the costs of acquiring and leasing new water supplies and for reclamation recovery of the groundwater aquifer
- Development fees are adjusted annually by a construction cost index and biennially using results of updated Water Resources Master Plans. The master planning process updates system demand and capital needs, incorporating current development, population and employment projections from the Planning Systems Department. A full update of fees was conducted to incorporate results of the Water Resources Master Plan adopted by the City Council in October 2001 with new fees effective July 15, 2002.

These fees are being adjusted by a construction cost index with adjusted fees effective July 1, 2003.

(4) Interest earnings on funds' cash balances – in accordance with City financial policies, interest earnings are distributed based on average balances in all City funds. As cash is used and not replenished, interest earnings decrease.

(5) Bond issuances – The City is planning the issuance of \$100.6 million in water bonds to address the arsenic and disinfection byproduct mandates and \$18.4 million in sewer bonds for 91st Avenue Wastewater Treatment Plant capital costs. This will distribute the costs over time and will minimize the impact to current ratepayers. The bonds will be issued by the Municipal Property Corporation and guaranteed by water and sewer rates. Debt service associated with the water regulatory requirements will be recovered through water rates. The City will include the debt service associated with the sewer improvements in sewer development fee computations.

(6) Intra-fund Loans - Loans between the Water and Sewer Funds are made as needed and as cash balances permit.

USES OF FUNDS

(1) Operating Expenses - the expenses that are incurred to provide services to the customer. These expenses are recovered through water and sewer rates. These include the expenses of the Water Resources Department as well as expenses of the Financial Services Department connected with meter reading and water and sewer billings and collections.

(2) Transfers – these are transfers to the City's general fund for use of assets or for services provided

- In-lieu property tax - a charge to the enterprise funds which compensates the general fund for the property tax that would have been paid if the utilities were private companies
- Indirect charge - a general overhead charge for services provided by the general fund for the benefit of the enterprise funds. Currently, this charge is 13.4% of the operating expenses of the enterprise funds
- Franchise fees - a reimbursement to the general fund for the utility's use of City streets and rights-of-way. This currently is 5% of the operating revenues of the utility funds.

(3) Debt service expense - the annual principal and interest expense of repayment of borrowed funds. The interest rate assumption used for future borrowings is 5.11%. A portion of these bonds will be repaid from development fee reserves because the original expenditures were for development-related projects.

(4) Capital Improvement Plan (CIP) expenses - these are derived from the most recently approved Water and Wastewater Master Plans for the infrastructure needs of the water and wastewater systems.

IV

Five-Year Financial Plan

The following pages are detailed charts for the period 2003/04 through 2007/08 as follows:

Sources and Uses of Funds

Water Fund

Sewer Fund

Operating Expenses and Transfers

Water Fund

Sewer Fund

Capital Projects funded by:

Water Rates

Water Development Fees

Water Resource Development Fees

Sewer Rates

Sewer Development Fees

Sources and Uses of Funds - 2003/04 through 2007/08
\$ In Millions

Water Enterprise Fund

	03/04	04/05	05/06	06/07	07/08	TOTALS
Sources of Funds						
Existing Cash*	101.35	80.86	66.53	34.07	37.29	101.35
Operating Revenues	68.08	70.88	73.00	75.13	77.28	364.37
Development Fees	8.33	8.58	8.84	9.10	12.52	47.37
Interest Earnings	1.76	1.38	0.89	0.59	0.54	5.17
New Bond Issuances	-	50.00	35.00	15.60	-	100.60
Intra-fund Loans	(6.00)	-	(8.00)	-	-	(14.00)
Total Sources of Funds	173.52	211.70	176.26	134.49	127.64	604.86
Uses of Funds						
Operating Expenses & Transfers	(37.89)	(39.69)	(42.46)	(48.63)	(51.33)	(220.01)
Debt Service	(8.31)	(12.63)	(17.44)	(12.11)	(12.15)	(62.64)
Capital Improvements	(46.47)	(92.85)	(82.28)	(36.46)	(33.32)	(291.37)
Total Uses of Funds	(92.67)	(145.17)	(142.19)	(97.20)	(96.80)	(574.03)
Cash Balance at Year End	80.86	66.53	34.07	37.29	30.84	30.84

Sewer Enterprise Fund

	03/04	04/05	05/06	06/07	07/08	TOTALS
Sources of Funds						
Existing Cash*	21.88	13.38	22.10	14.62	14.59	21.88
Operating Revenues	26.27	27.21	28.15	29.10	30.13	140.86
Development Fees	5.11	17.00	5.43	6.40	9.29	43.23
Interest Earnings	0.35	0.35	0.37	0.29	0.32	1.68
New Bond Issues	-	18.40	-	-	-	18.40
Intra-fund Loans	6.00	-	8.00	-	-	14.00
Total Sources of Funds	59.62	76.35	64.04	50.42	54.33	240.05
Uses of Funds						
Operating Expenses & Transfers	(12.83)	(13.21)	(14.33)	(14.89)	(15.53)	(70.78)
Debt Service	(5.68)	(7.40)	(7.39)	(7.35)	(7.31)	(35.12)
Capital Improvements	(27.73)	(33.65)	(27.69)	(13.58)	(14.71)	(117.36)
Total Uses of Funds	(46.24)	(54.25)	(49.41)	(35.82)	(37.55)	(223.27)
Cash Balance at Year End	13.38	22.10	14.62	14.59	16.78	16.78

*Cash balance at beginning of period

**WATER FUND - OPERATING EXPENSES AND TRANSFERS
CASH FLOW PROJECTIONS 2003/04 THROUGH 2007/08**

\$ in Millions

Cost Center	Requested 03/04	Projected 04/05	Projected 05/06	Projected 06/07	Projected 07/08	Total 03/04 - 07/08
Operating Expenses						
09010 Administration-Water	1.03	1.06	1.10	1.14	1.18	5.51
09030 Planet Ranch	0.22	0.23	0.24	0.25	0.26	1.19
09040 Engineering-Water	0.38	0.39	0.40	0.42	0.43	2.02
09100 Water Operations Admin.	0.79	0.82	0.84	0.87	0.91	4.23
09105 Water Conservation	0.48	0.50	0.51	0.53	0.55	2.57
09110 Water Distribution	3.15	3.25	3.34	3.46	3.60	16.80
09115 Water Production	6.41	6.60	6.80	7.04	7.32	34.16
09120 Southern Neighborhood	3.58	3.69	3.80	3.93	4.09	19.10
09200 Water Quality	0.55	0.57	0.59	0.61	0.63	2.95
09205 Tap Into Quality	0.00	0.00	0.00	0.00	0.00	0.00
09260 Water Laboratory	0.77	0.79	0.82	0.84	0.88	4.10
09310 Treatment Administration	0.38	0.39	0.40	0.42	0.43	2.02
09315 Treatment Operations	0.12	0.12	0.13	0.13	0.14	0.64
09320 Treatment Maintenance	0.45	0.47	0.48	0.50	0.52	2.41
09325 CAP Treatment Plant	7.43	7.65	7.88	8.15	8.48	39.59
09370 Advanced Water Treatment	1.12	1.15	1.19	1.23	1.28	5.97
03543 Revenue Recovery	0.14	0.14	0.15	0.15	0.16	0.74
03550 Meter Reading	0.99	1.02	1.05	1.08	1.13	5.27
03562 Utility Billing	0.31	0.32	0.33	0.34	0.35	1.64
03581 Remittance Processing	0.20	0.20	0.21	0.22	0.22	1.05
Operating Impacts - Capital	0.00	0.62	1.92	6.63	7.48	16.64
Total Operating Expenses	28.51	29.98	32.16	37.93	40.03	168.60
Transfers to General Fund						
Citywide Indirect	4.63	4.58	4.76	4.95	5.15	24.07
Franchise Fee	3.40	3.54	3.64	3.75	3.86	18.18
Payment in Lieu of Property Taxes	1.36	1.60	1.90	2.00	2.30	9.16
Total Transfers	6.38	9.72	10.31	10.70	11.31	51.41
Total Operating Exp. & Trsfers.	34.89	39.69	42.46	48.63	51.33	220.01

SEWER FUND - OPERATING EXPENSES AND TRANSFERS
CASH FLOW PROJECTIONS 2003/04 THROUGH 2007/08
\$ in Millions

Cost Center	Request 03/04	Project. 04/05	Project. 05/06	Project. 06/07	Project. 07/08	Total 03/04 - 07/08
Operating Expenses						
09020 Administration-Wastewater	0.18	0.18	0.19	0.19	0.20	0.95
09050 Engineering-Wastewater	0.13	0.13	0.14	0.14	0.15	0.68
09130 Wastewater Operation Admin.	0.15	0.16	0.16	0.17	0.18	0.82
09135 Wastewater Collection	0.59	0.61	0.63	0.65	0.68	3.16
09140 Wastewater Mech. Maint.	0.35	0.36	0.37	0.39	0.40	1.88
09185 Pumpback System	1.59	1.63	1.68	1.74	1.81	8.45
09330 Wastewater Quality	0.16	0.17	0.17	0.18	0.19	0.88
09350 Gainey Wastewater Reclamation	0.32	0.33	0.34	0.35	0.37	1.72
09270 Wastewater Laboratory	0.27	0.28	0.29	0.30	0.31	1.46
09380 Water Campus Wastewater Rec.	4.98	5.13	5.28	5.47	5.68	26.54
03542 Revenue Recovery	0.12	0.13	0.13	0.13	0.14	0.65
03561 Utility Billing	0.30	0.31	0.31	0.33	0.34	1.58
03582 Remittance Processing	0.18	0.18	0.19	0.19	0.20	0.93
Operating Impacts - Capital	0.00	0.00	0.65	0.68	0.71	2.04
Total Operating Expenses	9.33	9.60	10.54	10.92	11.35	51.75
Transfers to General Fund						
Citywide Indirect	1.34	1.33	1.38	1.44	1.50	6.99
Franchise Fee	1.31	1.36	1.41	1.45	1.51	7.04
Payment in Lieu of Property Taxes	0.84	0.92	0.99	1.08	1.17	5.00
Total Transfers	3.50	3.61	3.78	3.97	4.17	19.03
Total Operating Exp. & Trsfrs.	12.83	13.21	14.33	14.89	15.53	70.78

CAPITAL PROJECTS FUNDED BY WATER RATES
CASH FLOW PROJECTIONS 2003/04 THROUGH 2007/08

\$ in Millions

Project Name	2003/04	2004/05	2005/06	2006/07	2007/08	Totals 03/04 - 07/08
Arsenic Mitigation Treatment	5.0	10.0	15.0	14.1	17.9	62.0
CAP Plant Exp.- existing customers	2.0	2.0	3.0	3.0	9.0	19.0
CAP Plant Exp. - (DBP)	-	8.0	8.0	-	-	16.0
Chapparral Influent Waterline	1.0	2.2	1.4	-	-	4.6
Chapparral WTP Dist Sys	1.0	3.6	2.4	-	-	6.9
Chapparral Water Treat. Plant	7.0	6.0	27.1	-	-	40.1
Chapparral Water Treat. Plant (DBP)	-	14.0	7.0	-	-	21.0
Customer Service Billing System	-	-	-	-	-	-
Security Enhancements	0.3	-	-	-	-	0.3
Water Quality Improvements-So. Neighborhoods	7.4	-	-	-	-	7.4
Waterline Replacements	3.5	3.5	2.0	1.5	1.0	11.5
Utility Billing System	0.6	0.2	-	-	-	0.8
Art In Public Places	0.2	0.0	0.0	0.0	0.0	0.3
Fin. Svc-Handheld Meter Reading System	-	0.1	-	-	-	0.1
Fin. Svc-Remitt. Proc. Transport System	-	-	-	0.1	-	0.1
Info. Svc-Network Infrastructure	0.0	0.0	0.0	0.0	0.0	0.1
Info. Svcs-Personal Computers	0.1	0.1	0.1	0.1	0.1	0.4
Info. Svcs-Server Infrastructure	0.0	0.0	0.0	0.0	0.0	0.2
Info. Svcs. -Telephone Equipt.	0.0	0.0	0.0	0.0	0.0	0.1
Facilities Repair and Maint. Program	-	-	-	0.1	-	0.1
CAP Plant Reservoir Replacement	-	-	-	-	-	-
Water Quality Compliance Laboratory	-	-	-	-	-	-
 Total Cash Flow Water Rates	 28.0	 49.7	 66.1	 18.9	 28.1	 190.8
Inflation Factor (100% 2002/03)	1.0	1.1	1.1	1.1	1.2	
Total Cash Flow Water Rates - Infl.	28.8	52.7	72.2	21.3	32.5	207.7

CAPITAL PROJECTS FUNDED BY WATER DEVELOPMENT FEES

CASH FLOW PROJECTIONS 2003/04 THROUGH 2007/08

\$ in Millions

Project Name	2003/04	2004/05	2005/06	2006/07	2007/08	Totals 03/04 - 07/08
Chapparal Influent Waterline	0.04	0.09	0.06	-	-	0.19
Chapparal WTP Dist Sys	0.04	0.15	0.10	-	-	0.29
Chapparal Water Treat. Plant (\$1M GAC)	-	1.00	-	-	-	1.00
Water Quality Improvements-So. Neighborhoods	0.31	-	-	-	-	0.31
Alameda/122nd St Booster Pump Stn	-	0.83	-	-	-	0.83
Architect/Engineer Services	0.10	0.08	0.08	0.08	0.08	0.40
Booster Station Upgrades	0.05	0.05	0.05	-	-	0.15
CAP Hayden-Shea Intertie	1.00	4.00	3.50	-	-	8.50
CAP Plant Exp. - \$8M GAC (DBP)	-	-	-	8.00	-	8.00
Master Plan Update	0.13	0.13	0.23	-	-	0.48
Radio Telemetry-Monitoring Automation Citywide (Water)	0.23	0.13	0.13	0.13	-	0.61
Sewer Master Plan Projects	-	-	-	-	-	-
Union Hills Trans.Line-Wtr Camp.to Site 120	0.40	1.00	-	-	-	1.40
Utility Sleeve Crossings/Outer Loop	0.43	0.20	-	-	-	0.63
Water Distribution System Improvements	1.38	0.75	0.30	-	-	2.43
Water Master Plan Projects	-	-	-	-	-	-
Water Oversizing	0.70	0.60	0.77	-	-	2.07
Well Sites	1.50	1.50	1.50	2.47	-	6.97
Zone 12/13 Water Sys.Impr. Phase 1	4.00	1.82	-	-	-	5.82
Zone 12/13 Water Transmission Lines	2.00	4.00	-	-	-	6.00
Zone 2 Reservoir/120th & Shea Blvd	0.71	-	-	-	-	0.71
Zone 5-7 Pump St Pima/Deer Valley	-	-	-	-	-	-
Zone 5E Booster Pump Stn & Trans. Line	-	-	-	-	-	-
Zone 9 Reservoir Expansion	2.58	-	-	-	-	2.58
McDowell Mtn Ranch Reservoir Expansion	-	-	-	-	-	-
Pima Rd-Ashler Hills to Cave Creek Wtrline	-	-	-	-	-	-
Pima Road - Jomax to Ashler Hills Wtrline	-	-	-	-	-	-
Pima Road-Pinnacle Peak to Jomax Wtrline	-	-	-	-	-	-
Pima Road-Union Hills to Pinnacle Peak Wtrline	-	-	-	-	-	-
Total Cash Flow Water Dev Fees	15.60	16.32	6.71	10.67	0.08	49.37
Inflation Factor (100% 2002/03)	1.03	1.06	1.09	1.13	1.16	
Total Cash Flow Water Dev Fees - Infl.	16.07	17.31	7.33	12.00	0.09	52.80

CAPITAL PROJECTS FUNDED BY WATER RESOURCE DEVELOPMENT FEES

CASH FLOW PROJECTIONS 2003/04 THROUGH 2007/08

\$ in Millions

Project Name	2003/04	2004/05	2005/06	2006/07	2007/08	Totals 03/04 - 07/08
Adv. Water Treatment Plant - Ph 3	0.37	1.05	0.42	-	-	1.84
Adv. Water Treatment Plant - Ph 4	-	-	-	-	-	-
Adv. Water Treatment Plant - Ph 5	-	-	-	-	-	-
Deep Well Recharge/Recovery Facilities	1.00	0.50	1.00	0.50	0.59	3.59
Master Plan Update	0.04	0.04	0.07	-	-	0.16
Water Rights Acquisition	0.10	19.92	1.00	2.28	-	23.30
Adv. Water Treatment Plant (12 mgd) - Ph 2	-	-	-	-	-	-
 Total Cash Flow Water Res Dev Fees	 1.51	 21.51	 2.49	 2.78	 0.59	 28.89
Inflation Factor (100% 2002/03)	1.03	1.06	1.09	1.13	1.16	
Total Cash Flow Wtr Res Dev Fees - Infl.	1.55	22.82	2.72	3.13	0.69	30.92

CAPITAL PROJECTS FUNDED BY SEWER RATES
CASH FLOW PROJECTIONS 2003/04 THROUGH 2007/08
\$ in Millions

Project Name	2003/04	2004/05	2005/06	2006/07	2007/08	Totals 03/04 - 07/08
91st Ave Waste Water Treatment Plant	4.00	3.00	3.00	5.00	3.00	18.00
91st Avenue WWTP--Salt River Outfall Rehab	4.00	4.00	4.00	2.00	6.00	20.00
Citywide Flow Monitoring	0.11	-	-	0.13	-	0.24
Sewer Collection System Rehabilitation	0.25	0.25	0.25	0.23	0.20	1.18
Utility Billing System	0.60	0.20	-	-	-	0.80
Art In Public Places	0.04	0.03	0.05	0.06	0.06	0.23
Fin. Svc-Remittance Proc. Transport System	-	-	-	0.06	-	0.06
Info. Svc-Network Infrastructure	0.01	0.01	0.01	0.01	0.01	0.04
Info. Svcs-Personal Computers	0.03	0.03	0.03	0.03	0.03	0.13
Info. Svcs-Server Infrastructure	0.01	0.01	0.01	0.01	0.01	0.05
Info. Svcs. -Telephone Equipt.	0.00	0.00	0.00	0.00	0.00	0.01
Princess Road Metering Station Impr.	-	-	-	-	-	-
Radio Telemetry-Monitoring Automation Citywide	0.15	0.05	0.05	0.05	-	0.30
Water Quality Compliance Laboratory	-	-	-	-	-	-
 Total Cash Flow Sewer Rates	 9.19	 7.58	 7.39	 7.57	 9.30	 41.04
Inflation Factor (100% 2002/03)	1.03	1.06	1.09	1.13	1.16	
Total Cash Flow Sewer Rates - Infl.	9.47	8.04	8.08	8.52	10.78	44.90

CAPITAL PROJECTS FUNDED BY SEWER DEVELOPMENT FEES

CASH FLOW PROJECTIONS 2003/04 THROUGH 2007/08

\$ in Millions

Project Name	2003/04	2004/05	2005/06	2006/07	2007/08	Totals 03/04 - 07/08
Miller Road Sewer Phase 3	0.5	1.0	2.8	-	-	4.3
91st Avenue WWTP –UP01 Expansion	11.0	-	0.6	4.0	3.0	18.6
91st Avenue WWTP –UP01 Expansion	-	11.0	3.4	-	-	14.4
Adv. Water Treatment Plant - Ph 3	1.4	4.0	1.6	-	-	6.9
Adv. Water Treatment Plant - Ph 4	-	-	-	-	-	-
Adv. Water Treatment Plant - Ph 5	-	-	-	-	-	-
Citywide Flow Monitoring	0.1	-	-	0.1	-	0.2
Downtown Sewer Improvements	0.3	0.3	0.3	-	-	0.8
East Shea Sewer Improvements	0.2	0.2	0.2	-	-	0.6
Master Plan Update - Sewer	0.3	-	0.1	-	-	0.4
Outer Loop Swr Scotts to Pima Road	0.3	0.4	-	-	-	0.7
Relief Sewers – Citywide	0.4	0.3	0.3	0.3	0.3	1.4
Sewer Oversizing	0.1	0.1	0.1	0.1	0.1	0.6
Troon East RWDS Pump Station Mods	0.2	-	-	-	-	0.2
Water Reclamation Plant - Ph 3	3.0	7.0	8.6	-	-	18.6
Water Reclamation Plant - Ph 4	-	-	-	-	-	-
Water Reclamation Plant - Ph 5 (27 mgd)	-	-	-	-	-	-
Adv. Water Treatment Plant (12 mgd) - Ph 2	-	-	-	-	-	-
East Pumpback for Water Campus	-	-	-	-	-	-
 Total Cash Flow Sewer Dev Fees	 17.7	 24.1	 18.0	 4.5	 3.4	 67.7
Inflation Factor (100% 2002/03)	1.0	1.1	1.1	1.1	1.2	
Total Cash Flow Sewer Dev Fees - Infl.	18.3	25.6	19.6	5.1	3.9	72.5

CITY COUNCIL REPORT



MEETING DATE: 04/14/2003

ITEM No.

14

GOAL: Long-term Economic Prosperity

SUBJECT

Gila River Indian Community Water Rights Settlement Agreement

REQUEST

Adopt Resolution no. 6282, authorizing the execution of Agreement 2003-049-COS and Agreement 2003-050-COS.

Authorize execution of the Gila River Indian Community Water Rights Settlement Agreement (Agreement 2003-049-COS) and the Lease Agreement for CAP Water Among the City of Scottsdale, the Gila River Indian Community and the United States, as Trustee for the Gila River Indian Community (Agreement 2003-050-COS). The Settlement Agreement settles the water rights claims of the Gila River Indian Community, and the Lease Agreement provides a 100-year assured water supply of 12,000 acre-feet of CAP water to the City of Scottsdale.

BACKGROUND

The Gila River Indian Community ("GRIC") was established by Act of Congress in 1859. The GRIC reservation is located in Arizona just south of Phoenix, and encompasses over 370,000 acres. The Community has over 29,000 enrolled members.

The legal battle over the water rights now being settled began in 1924. The GRIC contend that upstream users divert flows illegally. Because the Gila River drains most of the state, upstream users include those along the Gila, San Pedro, Santa Cruz, Salt, and Verde Rivers. The GRIC also contend that excessive groundwater pumping near the reservation has resulted in damages to water rights and damages to water quality.

Federal courts have ruled there is a presumption that with the creation of reservations, Congress intended to provide the natural resources necessary for tribes to support themselves. These are called federal reserved rights. The early date at which the GRIC reservation was established allows the GRIC to make substantial claims to ground and surface water. If these claims are upheld in State court, it could threaten the use of ground and surface water supplies throughout the entire Phoenix metropolitan area, including Scottsdale.

The GRIC have claimed over two million acre-feet of water rights – more than the entire flow of the Central Arizona Project ("CAP") canal system. Negotiations have been ongoing for more than 15 years to settle these claims, thereby avoiding litigation. Agreement has been recently reached between the GRIC and the Settlement Parties, which represent all of the major cities and agricultural water users in the State of Arizona, including Scottsdale.

Action Taken _____

In addition, favorable resolution has also been reached in the ongoing dispute between the Federal government and the Central Arizona Project regarding the amount of CAP's repayment obligation and the allocation of CAP water among the Federal and non-Federal users (cities and agriculture) in Arizona.

Settlement Agreement

The general concept of the GRIC Settlement Agreement is similar to that of other Indian communities' water rights settlement agreements. The Settlement Parties agree to provide the GRIC with water resources. In exchange the GRIC agree to waive their claims to water filed in State court.

Under the terms of the Settlement Agreement, the GRIC would be entitled to use up to 653,500 acre-feet of water each year. The single largest supply in this "water budget" is CAP water (338,500 acre-feet), including both the GRIC's existing allocation and CAP water transferred from other sources. The GRIC are also authorized to use other supplies including Gila and Salt River surface water and groundwater, to meet their needs.

Scottsdale will receive two water supplies as a result of the Settlement Agreement, both of which are considered to be 100-year assured water supplies by the Arizona Department of Water Resources. These two water supplies are anticipated to be sufficient to meet Scottsdale's water needs to build-out, given current demand forecasts consistent with the City's Water Resources Master Plan.

The Settlement Agreement is expected to become effective no later than January 1, 2007. Scottsdale is not required to expend any funds on the lease water or the reallocation water until the settlement becomes effective, at which time the water supplies are expected to become available. The costs of acquiring these water supplies will be funded by Water Resources development fees.

Federal Settlement Legislation

Implementation of the GRIC Settlement Agreement and resolving the CAP repayment obligation issues are both contingent upon the passage of Federal authorizing legislation. To accomplish this goal, Senator Jon Kyl and Representative J.D. Hayworth simultaneously introduced the Arizona Water Rights Settlement Act of 2003 (S.437 & H.R. 885) on February 25, 2003.

This legislation, provides for settlement of the CAP repayment litigation and authorizes the GRIC water rights settlement, and is of vital importance to all of the Settlement Parties, including Scottsdale and many other Phoenix area cities. The settlement legislation requests \$200 million for funding of the GRIC settlement from the Federal government. The money will be utilized for major distribution system improvements and to establish a trust fund for future development

The GRIC are also authorized to lease CAP water to cities in Arizona. The initial leases are to four Phoenix area cities and total 41,000 acre-feet. Scottsdale's share of the GRIC leases is 12,000 acre-feet of this water.

While the legislation allows future leases, the GRIC are effectively prohibited from marketing any portion of their CAP water outside of the State of Arizona. The legislation requires that all CAP supplies be delivered through the CAP canal system. Any future Federal users of the CAP water mentioned above will also be

subject to the same restriction. This insures that CAP water will be used only to meet the future needs of Arizonans.

A key component of the legislation reallocates 65,000 acre-feet of currently uncontracted for CAP water to cities throughout Arizona. Scottsdale will receive 2,981 acre-feet of this water to help meet its future water demands. This water, together with the CAP water leased from the GRIC, is anticipated to be sufficient to meet Scottsdale's water needs to build-out consistent with the City's Water Resources Master Plan.

The legislation also provides that the term of all CAP municipal and industrial contracts will be extended to 100 years, making the contracts more consistent with the state assured water supply requirement. The settlement legislation will also finalize the method used to divide water among users in times of CAP shortage. Agriculture is the lowest priority followed by cities and Indian communities. Settling the water rights claims of the GRIC through rather than through court litigation reduces legal costs for all of the Settlement Parties.

Finally, the legislation sets a precedent which states that the GRIC agree that no additional lands may be taken into trust (added to the reservation) without the express approval of Congress. Currently, Indian communities may take lands into trust through an administrative procedure through the Bureau of Indian Affairs. The precedent of requiring Congressional authorization of such land acquisitions increases the opportunities for local government involvement and participation in the process.

Summary

- The GRIC water rights settlement is the largest water rights settlement ever, providing water rights certainty for users throughout the entire State of Arizona.
- The settlement resolves the GRIC's water rights claims of 2.0 million acre-feet through negotiation rather than litigation.
- The City of Scottsdale will acquire 14,981 acre-feet of assured water supplies as a part of the settlement, providing long-term water supply certainty for the community.
- Legislation has been introduced in Congress to implement the GRIC Settlement Agreement and provide for funding. The settlement will become effective once this legislation has been passed, and State courts ratify the agreement.

ANALYSIS & ASSESSMENT

Significant issues addressed.

While the Federal Congressional Legislation is progressing, there are two agreements for City Council consideration.

- **Settlement Agreement.**

The Settlement Agreement provides the GRIC with a long-term water supply. The Settlement Agreement and federal legislation provide Scottsdale with long-term water supply certainty by providing the City with two long-term assured water supplies and settling the long-outstanding water rights claims of the GRIC, thus reducing legal expenses.

The Settlement Agreement authorizes the GRIC to lease a portion of its CAP

water to specific cities in Arizona for specific amounts. The initial leases are to Goodyear, Peoria, Phoenix, and Scottsdale, for the total amount of 41,000 acre-feet. Each City is required to have an individual Lease Agreement, which includes the federal government as a party, in order to implement this provision of the Settlement Agreement.

- **Lease Agreement.**

As part of the Settlement Agreement individual agreements have been negotiated between the GRIC and individual settlement parties. In order for Scottsdale to obtain a lease from the GRIC for CAP water, individual city agreements are required.

The Settlement Agreement gives Scottsdale the ability to lease 12,000 acre-feet of Indian CAP water from the GRIC, complementing its existing leases with the San Carlos Apache Tribe and Salt River Pima Maricopa Indian Communities. The Lease Agreement provides for the actual delivery of the leased CAP water.

Through the legislation, Scottsdale will receive 2,981 acre-feet of un-contracted for CAP municipal and industrial priority water. When the legislation is passed, Council authorization will be required to amend Scottsdale's existing CAP subcontract to incorporate this water. Because this water is not currently under contract, capital charges have been accruing. CAP requires that any entity acquiring a CAP supply shall pay the accrued back capital charges.

RESOURCE IMPACTS

Available funding.

The CAP water supplies to be acquired in this settlement are estimated to cost \$19.1 million in today's dollars. The cost of the GRIC leased water is approximately \$18.5 million, while the payment of the accrued back capital charges on the currently uncontracted for CAP water will be \$600,000. Funding for these costs is available in CIP account 600-W6160 Water Rights Acquisition, which is funded by Water Resources Development fees.

The Settlement Agreement is expected to become effective no later than January 1, 2007. Scottsdale is not required to expend any funds on the lease water or the reallocation water until the settlement becomes effective, at which time the water supplies are expected to become available.

OPTIONS & STAFF RECOMMENDATION

Description of Option A:

Authorize the Mayor to execute the GRIC Water Rights Settlement Agreement and the related Lease Agreement for 12,000 acre-feet of water from the GRIC. Approval will provide long-term water certainty for the City, and will resolve many outstanding water resources issues.

Description of Option B:

If Scottsdale elected not to enter into the Settlement Agreement, the City would need to identify and acquire alternative water supplies to the GRIC CAP water, which would be extremely difficult and costly. The City's non-participation in the Settlement Agreement would also jeopardize the success of the settlement and the related Federal legislation.

Recommended Approach:

Staff recommends that Council authorize execution of the Settlement Agreement and related documents.

Next Steps:

The governing bodies of the Settlement Parties throughout the State of Arizona will be authorizing execution of the GRIC Settlement Agreement throughout March and April. The governing bodies of the City of Mesa and the Salt River Project have already authorized execution of the agreement.

Once all of the Settlement Parties have signed the agreement, efforts will turn toward securing passage of the Federal legislation (S.437 & H.R.885). The Congressional approval process could result in amendments to the Settlement Agreement. These amendments may require additional Council authorization.

RESPONSIBLE DEPT(S) Water Resources Department

STAFF CONTACT(S) Beth Miller, Water Resources Advisor, (480) 312-5009
emiller@ci.scottsdale.az.us

APPROVED BY

 4-1-03
Name Date

David M. Mansfield, Water Resources General Manager, (480) 312-5681,
dmansfield@ci.scottsdale.az.us

 4/2/03
Name Date

Roger Klingler, Assistant City Manager, (480) 312-5830,
rklingler@ci.scottsdale.az.us

ATTACHMENTS

1. Resolution No. 6282
2. Agreement Number 2003-049-COS
3. Agreement Number 2003-050-COS

RESOLUTION NO. 6282

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AGREEMENT NO. 2003-049-COS, THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT, AND AGREEMENT NO. 2003-050-COS, THE LEASE AGREEMENT FOR CENTRAL ARIZONA PROJECT WATER AMONG THE CITY OF SCOTTSDALE, THE GILA RIVER INDIAN COMMUNITY AND THE UNITED STATES, AS TRUSTEE FOR THE GILA RIVER INDIAN COMMUNITY.

WHEREAS, the Gila River Indian Community was established by Act of Congress in 1859 and presently has over 29,000 enrolled members; and

WHEREAS, the Gila River Indian Community reservation is located just south of Phoenix, Arizona, and encompasses over 370,000 acres; and

WHEREAS, the Gila River Indian Community has claimed substantially in excess of one million acre-feet of water rights in the Gila River Adjudication; and

WHEREAS, settlement negotiations have been ongoing for more than 15 years between the Gila River Indian Community and all of the major cities and agricultural water users in Arizona, including the City of Scottsdale; and

WHEREAS, the settling parties have reached tentative agreement on the terms of a comprehensive water rights settlement agreement; and

WHEREAS, the settling parties propose to execute the Gila River Indian Community Water Rights Settlement Agreement (the "Settlement Agreement"), substantially in the form attached hereto as Exhibit "A;" and

WHEREAS, the terms of the Settlement Agreement enable the Gila River Indian Community to enter into a long-term lease of certain of its Central Arizona Project ("CAP") water supplies with the City of Scottsdale; and

WHEREAS, the Gila River Indian Community and the City of Scottsdale have negotiated a 100-year lease of 12,000 acre-feet per year of Municipal & Industrial priority CAP water, substantially in the form attached hereto as Exhibit "B;" and

WHEREAS, execution of this lease will satisfy a significant portion of the City of Scottsdale's overall future potable water demands.

NOW, THEREFORE, BE IT RESOLVED by Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. Mary Manross, Mayor, is hereby authorized to execute, on behalf of the City of Scottsdale, Agreement No. 2003-049-COS, the Gila River Indian Community Water Rights Settlement Agreement.

Section 2. Mary Manross, Mayor, is hereby authorized to execute, on behalf of the City of Scottsdale, Agreement No. 2003-050-COS, the Lease Agreement for CAP Water Among the City of Scottsdale, the Gila River Indian Community and the United States, as Trustee for the Gila River Indian Community.

Section 3. Agreement Nos. 2003-049-COS and 2003-050-COS shall be substantially in the forms attached, with only such additions, deletions and modifications as shall be approved by the City Attorney. The City Attorney is hereby authorized to approve, and the Mayor is hereby authorized to execute based on such approval, such amendments to Agreement Nos. 2003-049-COS and 2003-050-COS as are reasonably necessary in the City Attorney's determination to effectuate the purposes and intent of the Agreements.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 14th day of April, 2003. *15th*

CITY OF SCOTTSDALE, an
Arizona municipal corporation

Mary Manross, Mayor

ATTEST:

Sonia Robertson, City Clerk

APPROVED AS TO FORM:

David A. Pennartz

David A. Pennartz, City Attorney

With the exception of one exhibit (the lease of CAP water from the Gila River Indian Community to the City of Scottsdale), the exhibits to the Gila River Indian Community Water Rights Settlement Agreement are too voluminous (over 1000 pages) to attach to the agreement for distribution with the Council's agenda packet. The City Clerk has retained a copy of the complete agreement with all exhibits for public review.

TABLE OF CONTENTS

Settlement Agreement

Exhibits to Settlement Agreement

<u>Tab</u>	<u>Number</u>	<u>Description</u>
1	2.19B	Map Showing BHP Wells
2	2.35	CAP Repayment Stipulation
3	2.82	Agreement between the United States of America and Salt River Valley Water Users Association for Construction of Drain Ditch across the Gila River Indian Reservation, dated June 21, 1923
4	2.84A-1 to 7	Maps of Gila River Impact Zone
5	2.146A	Map of San Manuel CC&N
6	2.146B-1 to 2	Maps of San Pedro Ag and New Large Industrial Use Impact Zone
7	2.146C-1	Maps of San Pedro M&I and Domestic Purposes Impact Zone
8	2.188A	Map of Winkelman CC&N
9	4.6A-B	Sample Report Required by Subparagraph 4.6
10	5.3	Legal Description of Protection Zones
11	5.4.1.1	MSIDD/BOR Agreement
12	7.2	Maricopa Contract
13	8.1	Community's Master Repayment Contract
14	8.2	Community's CAP Water Delivery Contract
15	8.16.4.1	Secretary's Approach for Determining the Amount of Water Available to the Community During a Time of Shortage Under the Community's 1992 CAP Water Delivery Contract Prior to Amendment
16	10.1	Community/Phelps Dodge Agreement
17	11.1	[Intentionally Not Used]
18	12.1	Graph of Community's Entitlement to SRP Stored Water

<u>Tab</u>	<u>Number</u>	<u>Description</u>
19	12.13	Graph of Community's Entitlement to Blue Ridge Stored Water
20	12.13.4	Description of Blue Ridge Fixed and Variable Operation, Maintenance and Replacement Cost
21	17.1A	Lease Agreement among the Community, the United States and the City of Goodyear
22	17.1B	Lease Agreement among the Community, the United States and the City of Peoria
23	17.1C	Lease Agreement among the Community, the United States and the City of Phoenix
24	17.1D	Lease Agreement among the Community, the United States and the City of Scottsdale
25	17.1.1A	Form of Voluntary Assignment and Assumption Agreement among the Community, the United States and the City of [insert name of City]
26	17.1.1B	Form of Assignment and Assumption Agreement among the Community, the United States and the City of [insert name of City]
27	18.1	Reclaimed Water Exchange Agreement among the Cities of Mesa and Chandler, the Community and the United States
28	19.1.1	Arlington Canal Company Agreement
29	19.1.2	Buckeye Irrigation Company Agreement
30	20.1	Agreement among the Community, the United States, and the San Carlos Irrigation and Drainage District
31	21.0	Standard Form of CAP Subcontract for CAP M&I Priority Water
32	22.1	Legal Description of Toka Sticks Golf Course
33	25.1	Waiver of Claims and Release Signed by the Parties other than the Community and the United States
34	25.2	Waiver of Claims and Release Signed by the Community and the United States for the Community and Members, but not for Members in their Capacities as Allottees
35	25.2.1.6	List of Remediations Exempted from the Community's Waiver for Injuries to Water Quality

<u>Tab</u>	<u>Number</u>	<u>Description</u>
36	25.3	Waiver of Claims and Release Signed by the United States for Allottees for all Claims other than Claims for Subsidence Damages Arising After the Enforceability Date
37	25.4	Waiver of Claims and Release Signed by the Community and the United States as to Claims Against SRP
38	25.5.1	Form of Waiver of Claims and Release to be Signed by the United States and Individual Allottees Upon Receipt by an Allottee of Compensation for Claims for Subsidence Damages Arising After the Enforceability Date
39	25.5.2	Form of Waiver of Claims and Release to be Signed by the United States and Members Upon Receipt by a Member of Compensation for Claims for Subsidence Damages Arising After the Enforceability Date
40	25.5.3	Form of Waiver of Claims and Release to be Signed by the United States and the Community Upon Receipt by the Community of Compensation for Claims for Subsidence Damages Arising After the Enforceability Date
41	25.6.1.9A	Current Tenants of Lone Butte Industrial Park
42	25.6.1.9B	Former Tenants of Lone Butte Industrial Park
43	25.6.1.9C	Contracts Between Community and Third Parties
44	25.6.1.9D	Business Licenses Issued by the Community to Third Parties
45	25.11.A.1	Stipulation and Form of Judgment and Decree in the Gila River Adjudication Proceedings
46	25.11.A.2	Judgment and Decree in the Gila River Adjudication Proceedings
47	25.11.B	Stipulation and Form of Judgment and Decree Regarding the Globe Equity Decree
48	25.15.1	Waiver of Claims and Release Signed by the Community Against the United States
49	25.16.1	Waiver of Claims and Release Signed by the United States in all of its Capacities Against the Community
50	25.17.1A-C	Forms of Dismissal in <i>Gila River Indian Community vs. Gila Valley Irrigation District, et al.</i>

<u>Tab</u>	<u>Number</u>	<u>Description</u>
51	25.17.2A-B	Forms of Dismissal in <i>United States vs. Roosevelt Water Conservation District, et al.</i>
52	25.17.3A-B	Forms of Dismissal in <i>Gila River Indian Community vs. American Smelting and Refining Company, et al.</i>
53	26.1	Safford Agreement
54	26.2	UVD Agreement
55	26.3	Duncan Agreement
56	26.4	Kearny Agreement
57	26.5	Mammoth Agreement
58	26.6	Paloma Agreement
59	26.8.1	Minimum Requirements of State legislation for Upper Gila River Watershed Maintenance Program
60	28.4.1	Claims of the Arizona Game and Fish Commission
61	29.5.2	Conditions to Relinquishment of CAP NIA Priority Water
62	29.7	Water Commissioner's Report of June 3, 1977
63	29.15A	Amendment to CAP Subcontracts other than for Hohokam Water
64	29.15B1	Amendment No. 2 to Chandler's CAP Water Service Subcontract for Hohokam Water
65	29.15B2	Amendment No. 2 to Mesa's CAP Water Service Subcontract for Hohokam Water
66	29.15B3	Amendment to Phoenix's Subcontract for Hohokam Water
67	29.15B4	Amendment to Scottsdale's Subcontract for Hohokam Water
68	29.17	Form of the Act
69	29.18	Elements of State Legislation
70	29.21	Subsidence Damages



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

RESOLUTION GR-06-03

A RESOLUTION AUTHORIZING THE GOVERNOR OF THE GILA RIVER INDIAN COMMUNITY TO SIGN AND OTHERWISE EXECUTE THE DOCUMENT ENTITLED "GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT"

WHEREAS, the well-being and prosperity of members of the Gila River Indian Community (the "Community") is a concern of the highest priority of the Gila River Indian Community Council (the "Community Council"); and

WHEREAS, the Community Council has long-recognized and supported the need to confirm and protect the Gila River Indian Reservation (the "Reservation") water rights through litigation and negotiation; and

WHEREAS, the Community Council has determined that the expeditious resolution of the Community's pending water rights claims is of critical importance to the future of the Community, and to the ongoing well-being of its members; and

WHEREAS, the Community's Water Negotiations Team has been engaged in ongoing negotiations with various State, Municipal, and Private parties (the "State Parties") to settle the Community's pending water rights claims; and

WHEREAS, the Community's Water Negotiations Team has spent considerable time reviewing the attached Gila River Indian Community Water Settlement Agreement (the "Settlement Agreement") which was negotiated and drafted in coordination with the State Parties; and

WHEREAS, the Community Council remains firmly committed to the expeditious approval of the Settlement Agreement by the Community and the State Parties and further supports introduction of the Arizona Water Settlements Act.

WHEREAS, the Arizona Water Settlements Act would codify the largest water claims settlement in the history of Arizona and represents the tremendous efforts of literally hundreds of people in Arizona and in Washington over a period of five years.

WHEREAS, the Settlement Agreement will provide the stability necessary for the Community to plan for the needs of the Gila River Indian Reservation and authorizes the use of the Lower Colorado River Basin Development Fund,

GILA RIVER INDIAN COMMUNITY
RESOLUTION GR-06-03
PAGE 2

which is funded solely from revenues paid by Arizona entities, for the costs of delivering CAP water to the Community and to construct irrigation works necessary for the Community and to construct irrigation works necessary for the Community to allow the Community to fully utilize the water allocated in the Settlement Agreement and the Arizona Water Settlement Act.

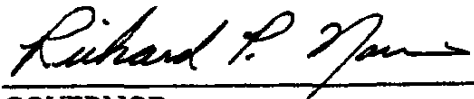
BE IT RESOLVED, that the Community Council hereby authorizes the Governor of the Community to sign and otherwise execute the attached Gila River Indian Community Water Rights Settlement Agreement and to agree to and execute such other documentation as may be necessary and appropriate (including minor corrections and amendments) to further the settlement process and legislation in the best interest of the Community.

BE IT FINALLY RESOLVED, that the Community Council hereby directs the Governor to take necessary actions to obtain the support of the State Parties for the Settlement Agreement and the introduction and passage of the Arizona Water Settlements Act.

CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a), (3), (4), (7), (9), (12), (18) and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted this 4th day of February, 2003, at a Special Community Council Meeting held in District 3, Sacaton, AZ, at which a quorum of 14 Members were present by a vote of: 14 FOR; 0 OPPOSE; 0 ABSTAIN; 3 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY


GOVERNOR

ATTEST:


COMMUNITY COUNCIL SECRETARY

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SACATON, AZ

GILA RIVER INDIAN COMMUNITY
WATER RIGHTS SETTLEMENT AGREEMENT

TABLE OF CONTENTS

1.0	RECITALS	2
2.0	DEFINITIONS	3
3.0	EXHIBITS	42
4.0	COMMUNITY'S WATER RIGHTS	47
5.0	UNDERGROUND WATER	59
6.0	GLOBE EQUITY DECREE.....	76
7.0	HAGGARD DECREE/MARICOPA CONTRACT/SACATON CONTRACT.....	77
8.0	COMMUNITY CAP WATER DELIVERY CONTRACT AND DESIGN AND CONSTRUCTION OF FACILITIES	78
9.0	RWCD AGREEMENT	95
10.0	COMMUNITY/HELPS DODGE AGREEMENT	96
11.0	ASARCO CAP WATER	101
12.0	SRP STORED WATER.....	102
13.0	COMMUNITY/SRP CAP WATER EXCHANGE	117
14.0	SRP-COMMUNITY DIRECT CAP WATER DELIVERY	125
15.0	SRP WATER DELIVERY SYSTEM CAPACITY	130
16.0	SRP DRAINS.....	133
17.0	CITIES CAP WATER LEASE AGREEMENTS	139
18.0	CITIES EXCHANGE OF RECLAIMED WATER.....	143
19.0	BUCKEYE IRRIGATION COMPANY AND ARLINGTON CANAL COMPANY.....	145
20.0	SCIDD AGREEMENT	146
21.0	TERMS AND CONDITIONS OF FUTURE COMMUNITY CAP WATER LEASE AGREEMENTS	147
22.0	COMMUNITY'S WATER MANAGEMENT ON TOKA STICKS TRUST LAND.....	150
23.0	COMMUNITY WATER CODE.....	152
24.0	APPLICABILITY OF FEDERAL RECLAMATION LAWS AND FULL COST PRICING PROVISIONS	155
25.0	WAIVERS OF CLAIMS	157
26.0	UPPER GILA VALLEY AND GILLESPIE DIVERTERS	188
27.0	COMMUNITY FUNDS	204
28.0	CONFIRMATION OF RIGHTS.....	206
29.0	OTHER PROVISIONS	220
30.0	EXECUTION BLOCKS.....	236

February 4, 2003
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AGREEMENT

THIS AGREEMENT, dated as of _____ is entered into among the United States of America; the State of Arizona; the Gila River Indian Community; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Irrigation District; Arizona Water Company; the Arizona cities of Casa Grande, Chandler, Coolidge, Glendale, Goodyear, Mesa, Peoria, Phoenix, Safford, Scottsdale, and Tempe; the Arizona towns of Florence, Mammoth, Kearny, Duncan and Gilbert; the Maricopa-Stanfield Irrigation & Drainage District; the Central Arizona Irrigation and Drainage District; Franklin Irrigation District; Gila Valley Irrigation District, the San Carlos Irrigation and Drainage District; the Hohokam Irrigation and Drainage District; the Arlington Canal Company, the Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; Central Arizona Water Conservation District; Phelps Dodge Corporation; and the Arizona Game and Fish Commission.

February 4, 2003

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1.0 RECITALS

1.1 Proceedings to determine the nature and extent of the rights to water of the Gila River Indian Community, Members, Allottees, the United States, and other claimants are pending in the Gila River Adjudication Proceedings, and enforcement actions regarding the interpretation and enforcement of the Globe Equity Decree are pending before the Globe Equity Enforcement Court.

1.2 Recognizing that final resolution of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all Parties, the Community, its neighboring non-Indian communities and others have agreed to settle permanently the disputes as provided in Paragraphs 5.0 through 13.0, 16.0, 19.0, 20.0, 22.0, 25.0, 26.0, 28.0 and 29.0 in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this settlement.

1.3 In keeping with its trust responsibility to Indian tribes and to promote tribal sovereignty and economic self-sufficiency, it is the policy of the United States to settle whenever possible water rights claims of Indian tribes without lengthy and costly litigation.

NOW, THEREFORE, the Parties agree as follows:

February 4, 2003
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2.0 DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

- 2.1 “Act” shall mean the Arizona Water Settlements Act.
- 2.2 “AFY” shall mean acre-feet per Year.
- 2.3 “Agreement” shall mean this agreement and the Exhibits attached hereto.
- 2.4 “Allottees” shall mean individuals who have an ownership interest in an Indian allotment located within the Reservation, which interest is held in trust by the United States.
- 2.5 “AMA” shall mean an active management area as defined in the Groundwater Code.
- 2.6 “Annual Index” for purposes of Paragraph 13.0 shall mean the index calculated by dividing the U. S. Department of Commerce’s final estimate of the chain-type annual weights price index for the gross domestic product, or any similar index used in substitution for this index, for the most recently completed third quarter of a given Year by the value of that same quantity for the third quarter for the Year immediately prior thereto.
- 2.7 “Annual Storage and Recovery Water” for purposes of Subparagraphs 2.17 and 2.18 shall mean water recovered by the storer and used on an annual basis in accordance with Section 45-851.01, Arizona Revised Statutes, as amended.

February 4, 2003

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- 2.8 “Arizona Water Banking Authority” shall mean the entity established pursuant to Chapter 14 of Title 45 of the Arizona Revised Statutes, or its successor agency or entity.
- 2.9 “Arizona Department of Water Resources” or “ADWR” shall mean the entity established pursuant to Title 45 of the Arizona Revised Statutes, or its successor agency or entity.
- 2.10 “Arizona Game and Fish Commission” shall mean the entity established pursuant to Chapter 2 of Title 17 of the Arizona Revised Statutes, or its successor agency or entity.
- 2.11 “Arizona State Land Department” shall mean the entity established pursuant to Chapter 1 of Title 37 of the Arizona Revised Statutes, or its successor agency or entity.
- 2.12 “Arizona Water Company” or “AWC” shall mean the Arizona corporation of that name, its subsidiaries and affiliates.
- 2.12A “ASARCO CAP Water” shall mean the 17,000 AFY of CAP M&I Priority Water Asarco may relinquish in favor of the Community pursuant to a relinquishment agreement currently being negotiated among the Community, the United States and Asarco.
- 2.13 “Asarco Incorporated”, “ASARCO” or “Asarco” shall mean the New Jersey corporation of that name and its subsidiaries with operations in the State.
- 2.14 [Intentionally not used].

2.15 [Intentionally not used].

2.16 “Available CAP Supply” shall mean for any given Year all Fourth Priority Water available for delivery through the CAP System, water available from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows captured by the Secretary for CAP use.

2.17 “Average Annual Municipal and Industrial Water Pumped Per Acre” for purposes of Paragraph 5.0 shall mean, in each Year after the Enforceability Date, (1) for each of the Eastern Protection Zones the aggregate amount of all water Pumped for Municipal Use and all water Pumped for Industrial Use in that zone during that Year, other than Annual Storage and Recovery Water, divided by the number of Municipal Acres and Industrial Acres in that zone in that Year, and (2) for the Western M&I Protection Zone the aggregate amount of all water Pumped for Municipal Use and all water Pumped for Industrial Use in that zone during that Year, other than Annual Storage and Recovery Water, divided by the number of Municipal Acres and Industrial Acres in that zone in that Year. The Average Annual Municipal and Industrial Water Pumped Per Acre shall be calculated separately for each Protection Zone.

2.18 “Average Annual Municipal Water Pumped Per Acre” for purposes of Paragraph 5.0 shall mean, in each Year after the Enforceability Date, the amount of all water, other than Annual Storage and Recovery Water, Pumped in the Western Municipal Protection Zone for Municipal Use, divided by the number of Municipal Acres in that zone in that Year.

February 4, 2003

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2.19 “Benson-Allison Decree” shall mean that decree entered in the Superior Court of Maricopa County, State of Arizona on November 14, 1917, styled *Nels Benson v. John Allison and Four Hundred Fifty-four Others*, No. 7589, and all amendments and supplements thereto.

2.19A “BHP” shall mean the corporation of that name, its subsidiaries, successors and assigns.

2.19B “BHP Wells” shall mean those wells owned or operated by BHP as shown in Exhibit 2.19B.

2.19C “Blue Ridge Account” shall mean the water account established and maintained by SRP pursuant to Subparagraph 12.13.2 for the benefit of the Community to account for the Community’s annual entitlement of Blue Ridge Stored Water.

2.19D “Blue Ridge Stored Water” shall mean that amount of water credited to the Community by SRP from Blue Ridge Reservoir pursuant to Subparagraph 12.13.

2.20 “Buckeye Irrigation Company” shall mean the corporation of that name organized under the laws of the Arizona Territory in 1907.

2.21 “Buckeye Water Conservation and Drainage District” shall mean the entity of that name that is a political subdivision of the State and an irrigation district with power of drainage organized under the laws of the State.

February 4, 2003
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2.22 “Build-Out Period” shall mean the period beginning on the Enforceability Date and ending on the earlier of: (1) January 1, 2025, or (2) December 31 of the Year in which Congress has appropriated or the Secretary has otherwise identified, set aside and made available for use by the Community, all amounts to be provided to the Community pursuant to the Community’s Master Repayment Contract.

2.23 “CAP” or “Central Arizona Project” shall mean that reclamation project authorized and constructed by the United States pursuant to Title III of the Colorado River Basin Project Act of September 30, 1968, (43 U.S.C. §§ 1501 et seq.), 82 Stat. 885, as amended.

2.24 “CAP Contract” shall mean a long-term contract, as that term is used in the CAP Repayment Stipulation, between any person or entity and the United States for delivery of water through the CAP System.

2.25 “CAP Contractor” shall mean any person or entity having a CAP Contract.

2.26 “CAP Fixed OM&R Charge” shall mean ‘Fixed OM&R Charge’ as that term is defined in the CAP Repayment Stipulation.

2.27 “CAP Indian Priority Water” shall mean that water having an Indian delivery priority as described in Subparagraph 8.16.

February 4, 2003

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2.28 “CAP Master Repayment Contract” shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereof.

2.29 “CAP M&I Priority Water” shall mean that water having a municipal and industrial delivery priority as described in Subparagraph 8.16.

2.30 “CAP NIA Priority Water” shall mean that water having a non-Indian agricultural delivery priority as described in Subparagraph 8.16.

2.31 “CAP Operating Agency” shall mean the entity or entities authorized to assume responsibility for the care, operation, maintenance and replacement of the CAP System. As of the Effective Date, CAWCD is the CAP Operating Agency.

2.32 “CAP Operating Agency Annual Schedule” for purposes of Paragraphs 13.0 and 14.0 shall mean the annual schedule prepared by the CAP Operating Agency showing monthly deliveries of the Community’s CAP Water to SRP either for exchange with the Community pursuant to Paragraph 13.0 or for direct delivery to the Community pursuant to Paragraph 14.0.

2.33 “CAP Pumping Energy Charge” shall mean ‘Pumping Energy Charge’ as that term is defined in the CAP Repayment Stipulation.

February 4, 2003

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2.34 “CAP Pumping Energy Costs” shall mean ‘Pumping Energy Costs’ as that term is defined in the CAP Repayment Stipulation.

2.35 “CAP Repayment Stipulation” shall mean the Stipulation Regarding Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment Upon the Satisfaction of Conditions, filed on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action), United States District Court for the District of Arizona, and the order entered therein on May 9, 2000, and any amendment or revision thereof.

2.36 “CAP Subcontract” shall mean a long-term subcontract, as that term is used in the CAP Repayment Stipulation, among any person or entity, the United States, and CAWCD for the delivery of water through the CAP System.

2.37 “CAP Subcontractor” shall mean any person or entity having a CAP Subcontract.

2.38 “CAP System” shall mean the Mark Wilmer Pumping Plant, the Hayden-Rhodes Aqueduct, the Fannin-McFarland Aqueduct, the Tucson Aqueduct, and associated pumping plants and appurtenant works of the Central Arizona Project aqueduct system and any extensions, additions thereto, or replacement features thereof.

2.39 “Carryover Account” shall mean the water account established and maintained by SRP pursuant to Subparagraph 12.3.1 for the benefit of the Community to account for any credits

February 4, 2003
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accrued in the Current Account in a given year but not used by the Community prior to May 1 of the following year.

2.40 “CAWCD” shall mean the Central Arizona Water Conservation District, a political subdivision of the State and a tax-levying public improvement district organized under the laws of the State, or its successor, which is the contractor under the CAP Master Repayment Contract.

2.41 “Central Arizona Irrigation and Drainage District” or “CAIDD” shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

2.42 “Central Protection Zone” shall have the meaning set forth in the legal description in Exhibit 5.3.

2.43 “CERCLA” for purposes of Paragraph 25.0 shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 1994 (42 U.S.C. §§ 9601-9675) 94 Stat. 2767, as amended.

2.44 “CFS” shall mean cubic feet per second.

2.45 “Chandler Contributed Reclaimed Water” shall mean Reclaimed Water made available to the Community by the City of Chandler as a contribution to the Community’s Settlement Water Budget pursuant to Subparagraph 18.1.3.

2.46 “Chandler Exchange Reclaimed Water” shall mean Reclaimed Water made available to the Community by the City of Chandler pursuant to Subparagraph 18.1.2 in exchange for Community CAP Exchange Water.

2.47 [Intentionally not used].

2.48 “Chandler Reclaimed Water” shall mean Chandler Exchange Reclaimed Water and Chandler Contributed Reclaimed Water.

2.49 “Cities” or “City” when referred to individually shall mean, except when used as part of a proper name, for purposes of Paragraph 17.0 and Subparagraphs 2.108 and 2.109, one or more of the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix and Scottsdale. For purposes of Subparagraph 29.7, the term “Cities” shall mean Gilbert and Tempe and the above referenced cities other than Goodyear.

2.50 “Community CAP Exchange Water” shall mean that portion of the Community’s CAP Indian Priority Water provided to the City of Chandler or the City of Mesa in exchange for Chandler Exchange Reclaimed Water or Mesa Reclaimed Water pursuant to Subparagraphs 18.1.1 and 18.1.2, and Exhibit 18.1.

2.51 “Community’s CAP Indian Priority Water” shall mean that portion of the Community’s CAP Water that is CAP Indian Priority Water.

February 4, 2003
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2.52 “Community CAP Water” or “Community’s CAP Water” shall mean water to which the Community is entitled pursuant to the Community’s CAP Water Delivery Contract.

2.53 “Community’s CAP Water Delivery Contract” shall mean Contract No. 3-07-30-W0284 between the Community and the United States dated October 22, 1992, as amended and restated, a copy of which is attached as Exhibit 8.2.

2.54 “Community’s Master Repayment Contract” shall mean Contract No. 6-07-03-W0345 between the United States and the Community dated July 20, 1998, as amended, providing for the construction of certain water delivery facilities; a copy of such contract and its Amendment No. 1 is attached as Exhibit 8.1.

2.55 “Community/Phelps Dodge Agreement” shall mean that contract between the Community and Phelps Dodge dated May 4, 1998, as amended, a copy of which is attached as Exhibit 10.1.

2.56 “Community/SRP Exchange Water” shall mean that Community CAP Water exchanged by the Community with SRP for SRP Stored Water Credits in accordance with Paragraph 13.0.

2.57 [Intentionally not used].

February 4, 2003
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2.58 "CSIF" shall mean the "CAP/SRP Interconnection Facility" that connects the Hayden-Rhodes aqueduct of the CAP System to SRP's water delivery system.

2.59 "Current Account" shall mean the water account established and maintained by SRP pursuant to Subparagraph 12.3.1 for the benefit of the Community to account for the Community's annual entitlement of SRP Stored Water.

2.60 "Direct Delivery Account" shall mean the water account established and maintained by SRP for the benefit of the Community pursuant to Paragraph 14.0.

2.61 "Diversion" shall mean the act of Diverting. For purposes of Paragraph 12.0 only, "Diversion" shall include the impoundment of drain water from the Dead Horse Ditch, Gila Drain, and Maricopa Drain; provided, however, that Diversion shall not include the rerouting of water from the Dead Horse Ditch, Gila Drain, or Maricopa Drain to a realigned drain, ditch, or other structure that serves the same purpose as such drain, ditch, or other structure served before realignment.

2.62 "Divert" or "Diverting" shall mean to receive, withdraw or develop and produce or capture Groundwater, Surface Water, CAP water, or Effluent by means of a ditch, canal, flume, bypass, pipe line, pit, collection or infiltration gallery, conduit, well, pump, turnout, or other mechanical device or any other human act. For purposes of Paragraph 12.0 only, "Divert" or "Diverting" shall include the impoundment of drain water from the Dead Horse Ditch, Gila Drain and Maricopa Drain; provided, however, that Diversion shall not include the rerouting of

February 4, 2003

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water from the Dead Horse Ditch, Gila Drain, or Maricopa Drain to a realigned drain, ditch, or other structure that serves the same purpose as such drain, ditch or other structure served before realignment.

2.63 “Domestic Purposes” shall mean uses related to the supply, service and activities of an individual household or private residence, including the application of water to less than two (2) acres of land appurtenant to such household or residence to produce plants or parts of plants for sale or human consumption or for use as feed for livestock, range livestock or poultry.

2.64 “Drain Ditches” shall mean those drainage ditches or structures located in whole or in part on the Reservation north of the Gila River and includes only those set forth in Subparagraph 16.1.

2.64A “Duncan Agreement” shall mean that agreement among the Community, SCIDD, the United States and the Town of Duncan attached as Exhibit 26.3.

2.65 “Eastern Protection Zone” shall mean either the Eastern Protection Zone North or the Eastern Protection Zone South.

2.66 “Eastern Protection Zones” shall mean both the Eastern Protection Zone North and the Eastern Protection Zone South, as set forth in the legal description in Exhibit 5.3.

February 4, 2003
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2.67 “Eastern Protection Zone North” shall have the meaning set forth in the legal description in Exhibit 5.3.

2.68 “Eastern Protection Zone South” shall have the meaning set forth in the legal description in Exhibit 5.3.

2.69 “Effective Date” shall mean December 31, 2002.

2.70 “Effluent” shall mean water that has been used for domestic, municipal, or industrial purposes and that is available for reuse for any purpose, but water shall not become Effluent solely as a result of having been used for hydropower generation off-Reservation.

2.70A “Eligible Safe Harbor Acres” shall mean all acres that were irrigated with water Diverted from within an Impact Zone during any of the Years in the period 1995 to 2001, inclusive, and such other acres located in the San Pedro Ag and New Large Industrial Use Impact Zone that: (i) were irrigated during any of the Years in the period 1993-2001, inclusive, and (ii) are brought into production no later than December 31, 2003, by the owner of such acres as of June 30, 2002; provided that for purposes of this Subparagraph the term ‘owner of such acres’ shall include any heir to such owner.

2.71 “Enforceability Date” shall be the date on which the authorizations contained in Section 207 of the Act become effective.

February 4, 2003

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2.72 “Exceedance Year” for purposes of Paragraph 5.0 shall mean a Year in which the State is required to Replenish pursuant to any one of Subparagraphs 5.3.3.1.1 through 5.3.3.1.7.

2.73 “Excess CAP Water” shall mean ‘Excess Water’ as that term is defined in the CAP Repayment Stipulation.

2.74 “Excess CAP Water Contract” shall mean a contract between any person or entity and CAWCD for the delivery of Excess CAP Water.

2.75 “Excess CAP Water Contractor” or “Excess CAP Water Contractors” shall mean one or more persons or entities having an Excess CAP Water Contract.

2.76 “Excess Pumping” for purposes of Subparagraphs 5.3.3.1.7, 5.3.4.5, 5.3.10 and 5.3.12 shall mean any Pumping by AWC greater than one thousand two hundred seventy-five (1,275) AFY from the Wells and all other wells located within the Eastern Protection Zone South, collectively, for transport outside the Eastern Protection Zones.

2.77 “Exchange Reclaimed Water” shall have the meaning set forth in paragraph 3 of the agreement attached as Exhibit 18.1.

2.77A “Exhibit” shall mean an exhibit to this Agreement as set forth in Paragraph 3.0.

February 4, 2003
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2.78 “Fee Lands” for purposes of Paragraph 25.0 shall mean lands owned by the Community outside the exterior boundaries of the Reservation as of the Effective Date that are not Off-Reservation Trust Lands.

2.79 “Firm Capacity” shall mean the capacity in the SRP water delivery system that is not interruptible by SRP as set forth in Subparagraph 15.1.

2.80 “Fourth Priority Water” shall mean Colorado River water available for delivery within the State for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights, and other arrangements between the United States and water users in the State entered into or established subsequent to September 30, 1968, for use on Federal, State, or privately owned lands in the State (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2), after first providing for the delivery of water under 43 U.S.C. § 1524(e), pursuant to the CAP Master Repayment Contract for the delivery of Colorado River water for the Central Arizona Project, including use of Colorado River water on Indian lands.

2.81 “Franklin Irrigation District” shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

2.82 “Gila Drain” shall mean the drain designated and provided for in that agreement between the United States of America and Salt River Valley Water Users’ Association for Construction of Drain Ditch across the Gila River Indian Reservation, dated June 21, 1923, a copy of which is attached as Exhibit 2.82.

February 4, 2003
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2.83 “Gila River Adjudication Court” shall mean the Superior Court of the State of Arizona in and for the County of Maricopa exercising jurisdiction over the Gila River Adjudication Proceedings.

2.84 “Gila River Adjudication Proceedings” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated)*.

2.84A “Gila River Impact Zone” shall mean the lands identified as such on the maps set forth in Exhibit 2.84A.

2.85 “Gila River Indian Community” or “Community” shall mean the sovereign government composed of members of the Pima Tribe and the Maricopa Tribe, which is organized under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. § 476).

2.86 “Gila River Indian Reservation” or “Reservation” shall mean, those lands located within the exterior boundaries of the reservation created pursuant to the Act of February 28, 1859, and modified by the executive orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915, but not those lands located in Sections 16 and 36, Township 4 South, Range 4 East, Gila and Salt River Base and Meridian.

2.87 “Gila Valley Irrigation District” shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

2.87A “Gillespie Diverters” shall mean all those signatories of the Paloma Agreement other than the Community, SCIDD and the United States. The Gillespie Diverters are not Parties to this Agreement and are not bound by any of the terms and conditions hereof.

2.87B “GIS” shall mean a digital electronic geographic information system that is used to incorporate electronic mapping images and associated interactive data and textual information.

2.88 “Globe Equity Decree” shall mean that decree dated June 29, 1935, entered in *The United States of America v. Gila Valley Irrigation District, et al.*, Globe Equity No. 59, in the United States District Court for the District of Arizona, and all court orders and decisions supplemental thereto.

2.89 “Globe Equity Decree Water” shall mean the Community’s entitlement to water under the Globe Equity Decree as set forth in Paragraph 6.0 of this Agreement, which entitlement is subject to the right to an allocation of water for allotted lands within the Reservation for irrigation purposes pursuant to the Water Code.

2.90 “Globe Equity Enforcement Court” shall mean the United States District Court for the District of Arizona exercising continuing jurisdiction over the Globe Equity Decree.

2.91 “GPM” shall mean gallons per minute.

2.92 “Groundwater” shall mean all water beneath the surface of the earth other than Recharged Water or Surface Water.

2.93 “Groundwater Code” shall mean Chapter 2 of Title 45, Arizona Revised Statutes, as amended.

2.94 “Groundwater Savings” shall mean the use of Imported Water in a Groundwater Savings Facility in a Protection Zone.

2.95 “Groundwater Savings Facility” shall mean a facility as described in Section 45-802.01(8), Arizona Revised Statutes, as amended.

2.96 “Haggard Decree” shall mean that decree dated June 11, 1903, entered in *United States of America, as guardian of Chief Charley Juan Saul and Cyrus Sam, Maricopa Indians and 400 other Maricopa Indians similarly situated v. N.W. Haggard, et al.*, Cause No. 19, in the District Court for the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa and all court orders and decisions supplemental thereto.

2.97 “Haggard Decree Water” shall mean the Community’s entitlement to water under the Haggard Decree as set forth in Paragraph 7.0 hereof, which entitlement is subject to the right to

February 4, 2003

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an allocation of water for allotted lands within the Reservation for irrigation purposes pursuant to the Water Code.

2.98 "Hohokam Agreement" shall mean the Agreement among the United States, the Central Arizona Water Conservation District, the Hohokam Irrigation and Drainage District, and the Arizona cities of Chandler, Mesa, Phoenix and Scottsdale, dated December 21, 1993.

2.99 "Hohokam Irrigation and Drainage District" or "Hohokam" shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

2.100 "HVID CAP Water" shall mean that water that was acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP Subcontract entitlement in accordance with Contract No. 3-07-30-W0290 among CAWCD, Harquahala Valley Irrigation District, and the United States, and converted to CAP Indian Priority Water pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628, Title IV, 104 Stat. 4468, 4480.

2.100A "Impact Zone" or "Impact Zones" shall mean either the Gila River Impact Zone, the San Pedro Ag and New Large Industrial Use Impact Zone, the San Pedro M&I and Domestic Purposes Impact Zone, or any combination thereof, as the context requires.

February 4, 2003
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2.101 "Imported Water" for purposes of Paragraph 5.0 and Subparagraph 2.94 shall mean all water transported into a Protection Zone for a Municipal Use, Industrial Use or an Irrigation Use in that Protection Zone.

2.102 "Industrial Acre" for purposes of Subparagraph 2.17 shall mean the acre or acres in an Eastern Protection Zone or Western M&I Protection Zone on which Industrial Use of water has commenced after the Effective Date and for which the water use is being reported to ADWR.

2.103 "Industrial Use" for purposes of Subparagraphs 2.17, 2.101, 2.102, 2.118.2 and Paragraph 5.0 shall mean a Non-Irrigation Use commenced after the Effective Date that is not supplied by a Municipal Provider, including "animal industry use" and "expanded animal industry use", as the quoted terms are defined in the Groundwater Code. Industrial Use shall include any use within a Protection Zone in excess of the quantity allowed by any:

2.103.1 Type one non-irrigation grandfathered right issued by ADWR that is in force on the Effective Date;

2.103.2 Type two non-irrigation grandfathered right issued by ADWR that is in force on the Effective Date; or,

2.103.3 General Industrial Use permit issued by ADWR that is in force on the Effective Date.

February 4, 2003
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2.104 "Injuries to Water Quality" for purposes of Paragraph 25.0 and Subparagraphs 2.105, 12.10.2, 16.7 and 27.2 shall mean any contamination, diminution or deprivation of Water quality under Federal, State or other law.

2.105 "Injuries to Water Rights" for purposes of Paragraphs 25.0 and Subparagraph 16.7 shall mean any interference with, diminution of, or deprivation of Water Rights under Federal, State or other law, including changes in the Underground Water table and the effects of such changes, but not including claims for Subsidence Damages or Injuries to Water Quality, which are addressed separately herein.

2.106 "Irrigation Grandfathered Right" shall have the meaning set forth in the Groundwater Code.

2.107 "Irrigation Use" shall mean the use of water on two (2) or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock or poultry.

2.107A "Kearny Agreement" shall mean that agreement among the Community, SCIDD, the United States and the Town of Kearny attached as Exhibit 26.4.

2.108 "Lease Agreement" or "Lease Agreements" shall mean one or more of those agreements entered into among the Community, the Secretary, and one or more of the Cities pursuant to Paragraph 17.0, the forms of which are attached as Exhibits 17.1A through 17.1D.

February 4, 2003
Execution copy

2.109 "Leased Water" shall mean that portion of the Community's CAP Indian Priority Water that is leased to a City pursuant to a Lease Agreement.

2.110 "Long-Term Storage Credits" for purposes of Paragraph 5.0 shall have the meaning set forth in Section 45-802.01(11), Arizona Revised Statutes, as amended.

2.110A "Mammoth Agreement" shall mean that agreement among the Community, SCIDD, the United States and the Town of Mammoth attached as Exhibit 26.5.

2.111 "Maricopa Contract" shall mean that Contract For Pumping Water For Maricopa Indians on Gila River Indian Reservation dated May 5, 1936, between the United States of America and the Salt River Valley Water Users' Association, as amended on June 12, 1968, and which is amended and restated as Exhibit 7.2.

2.112 "Maricopa Drain" shall mean the water conveyance facilities described in the Maricopa Contract.

2.113 "Maricopa-Stanfield Irrigation & Drainage District" or "MSIDD" shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

February 4, 2003

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2.114 "Maximum Capacity" shall mean the maximum capacity in the SRP water delivery system that SRP shall provide to the Community pursuant to Paragraph 15.0.

2.115 "Member" or "Members" shall mean any person or persons duly enrolled as members of the Gila River Indian Community.

2.116 "Mesa Reclaimed Water" shall mean Reclaimed Water made available to the Community by the City of Mesa in exchange for Community CAP Exchange Water pursuant to Subparagraph 18.1.1.

2.117 "MSIDD/BOR Agreement" shall mean the agreement between MSIDD and the Bureau of Reclamation dated June 28, 1996, a copy of which is attached hereto as Exhibit 5.4.1.1.

2.118 "Municipal Acre" for purposes of Subparagraphs 2.17, 2.18 and 2.120 shall mean:

2.118.1 The acre or acres in a subdivided parcel of land within an Eastern Protection Zone or the Western Municipal Protection Zone on which water use has commenced after the Effective Date, and for which the water use is being reported to the ADWR, and

2.118.2 The acre or acres in an unsubdivided parcel of land within an Eastern Protection Zone or within the Western M&I Protection Zone on which water Pumped from within the Protection Zone is supplied by a Municipal Provider for an Industrial Use or a Municipal Use.

February 4, 2003

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2.119 "Municipal Provider" for purposes of Subparagraphs 2.103, 2.118.2 and 2.120 shall mean a "municipal provider" or "municipal water provider" as those terms are defined in the Groundwater Code.

2.120 "Municipal Use" for purposes of Paragraph 5.0 and Subparagraphs 2.17, 2.18, 2.101, and 2.118.2 shall mean a Non-Irrigation Use commenced after the Effective Date and supplied by a Municipal Provider on Municipal Acres.

2.121 "M&I Use" or "M&I Uses" shall mean the use of water for municipal, industrial, commercial, residential or any other purposes that are not Irrigation Uses.

2.122 "Net SRP Reservoir Storage" shall mean that amount of water physically stored in SRP Reservoirs on May 1 of each year less water storage credits calculated by SRP for water stored for the United States on behalf of the San Carlos Apache Tribe of the San Carlos Reservation and the Bureau of Reclamation, the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, the Gila River Indian Community, RWCD, the Buckeye Irrigation Company, the Buckeye Water Conservation and Drainage District, the City of Phoenix, the City of Tempe, the City of Scottsdale, the City of Mesa, the City of Glendale, and the City of Chandler. The storage credits referenced in the preceding sentence shall be those credits provided under: (1) the terms and conditions of this Agreement and (2) judgments and agreements with the entities specified above as they exist on the Effective Date. The amount of water physically stored in SRP Reservoirs used to perform the calculations of Net SRP Reservoir Storage pursuant to this

February 4, 2003

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Agreement shall not exceed SRP's storage rights, as determined in the Gila River Adjudication Proceedings, for SRP storage facilities existing as of the Effective Date.

2.123 "New Ag Use" for purposes of Exhibit 26.8.1 shall mean an Irrigation Use of water Diverted from within an Impact Zone which use did not exist in at least one of the four (4) Years immediately preceding the Year in which the Effective Date occurs.

2.123A "New Domestic Use" for purposes of Subparagraph 26.8.2 shall mean a use of water for Domestic Purposes Diverted from within an Impact Zone which use did not exist as of the Effective Date.

2.123B "New Large Industrial Use" for purposes of Subparagraphs 2.123C and 26.8.2 shall mean a use of water for commercial power generation, mining and associated processes, or any other Industrial Use that uses in excess of two hundred fifty (250) AFY of water Diverted from within an Impact Zone which use did not exist as of the Effective Date.

2.123C "New Large Industrial Use Cap" for purposes of Subparagraph 26.8.2.6.1 shall mean the maximum of two hundred fifty (250) AFY for any eligible Non-GE 59 Water User or a total of one thousand (1,000) AFY for any number of Non-GE 59 Water Users Diverting water for New Large Industrial Uses from within an Impact Zone after the Effective Date.

February 4, 2003
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2.124 "New Use" for purposes of Paragraph 5.0 shall mean any Non-Irrigation Use not existing in at least one of the four (4) Years immediately preceding the Year in which the Effective Date occurs.

2.124A "Non-GE 59 Water Users" shall mean: (1) the Arizona State Land Department, to the extent that it Diverts water from within the Gila River Watershed above Ashurst-Hayden Dam the Diversion of which is not specifically authorized by the Globe Equity Decree; (2) all persons, entities, corporations or municipal corporations under Federal, State or other law in the Gila River Watershed above Ashurst-Hayden Diversion Dam who meet both of the following conditions: (a) they are not a Party, and (b) they now or in the future, Divert water from within the Gila River Watershed above Ashurst-Hayden Diversion Dam, the Diversion of which is not specifically authorized by the Globe Equity Decree; (3) any successor in interest to any persons, entities, corporations or municipal corporations under Federal, State or other law that otherwise meet the definition of Non-GE 59 Water User set forth in Subparagraphs 2.124A(1) or (2) above.

Notwithstanding anything to the contrary in the first paragraph of this definition, the term "Non-GE 59 Water User" shall not include: (i) persons, entities, corporations or municipal corporations under Federal, State or other law located in the Gila River watershed above Ashurst-Hayden Diversion Dam who now or in the future Divert water from within the Gila River Impact Zone for Irrigation Use; (ii) persons, entities, corporations or municipal corporations under Federal, State or other law located in the Gila River watershed above Ashurst-Hayden Diversion Dam who now or in the future Divert water from outside an Impact Zone; (iii) Asarco; and (iv) the San Carlos Apache Tribe, its members, allottees, or the United States on behalf of each. Whether and the extent to which pumping from a well located outside the exterior boundary of

February 4, 2003

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an Impact Zone results in a cone of depression that extends into an Impact Zone and is considered to be Diverting water from within such Impact Zone shall be determined in accordance with the cone of depression test standard that is to determined by the Gila River Adjudication Court.

2.125 "Non-Irrigation Use" shall mean a use of Underground Water other than an Irrigation Use.

2.126 "Off-Reservation Trust Lands" shall mean lands outside the exterior boundaries of the Reservation that are held in trust by the United States for the benefit of the Community and its Members as of the Enforceability Date.

2.127 "Operation, Maintenance and Replacement" or "OM&R" shall mean, for purposes of Paragraph 27.0, all activities required for the efficient delivery of water and drainage of lands, including, but not limited to, the care, operation, maintenance, repair and replacement of canals, laterals, drains, pumps, wells and appurtenances.

2.127A "Paloma Agreement" shall mean that contract among the Community, SCIDD, the United States on behalf of each and on behalf of Allottees, and the Gillespie Diverters, a copy of which is attached as Exhibit 26.6.

2.128 "Paragraph" shall mean a numbered paragraph of this Agreement including all Subparagraphs in such Paragraph.

2.129 “Party” shall mean an entity represented by a signatory to this Agreement and “Parties” shall mean more than one of such entities. The State’s participation as a Party shall be as described in Subparagraph 29.4.

2.130 “Phelps Dodge Corporation” or “Phelps Dodge” shall mean the New York corporation of that name and its subsidiaries, successors and assigns.

2.130A “Phreatophyte” shall mean a deep rooted plant that grows in locations in which the root system reaches the water table, or the capillary zone immediately above the water table, deriving a perennial and secure supply of water from such source.

2.131 “Protection Zone” or “Protection Zones” shall mean one or more of the protection zones described in Exhibit 5.3.

2.132 “Pump”, “Pumped” or “Pumping” for purposes of Paragraph 5.0 and Subparagraphs 2.17, 2.18, 2.76, 2.118.2, 2.153, 2.168, 4.2.2, 25.5.2, 25.5.3 and 26.8.2 shall mean the withdrawal of Underground Water from a well.

2.133 [Intentionally not used].

February 4, 2003
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- 2.134 "Recharge", "Recharged" or "Recharging" shall mean the storage of water in a Groundwater Savings Facility or an Underground Storage Facility pursuant to a Water Storage Permit.
- 2.135 "Recharged Water" shall mean Water that has been Recharged.
- 2.136 "Reclaimed Water" shall mean Effluent that: (1) meets the A+ Reclaimed Water Quality Standards as set forth in Exhibit 18.1, or (2) is Diverted by the Community as provided in Exhibit 18.1.
- 2.137 "Reclaimed Water Exchange Premium" shall mean the difference, in acre-feet, between the amount of Community CAP Exchange Water delivered to Chandler and Mesa and the amount of Exchange Reclaimed Water made available to the Community by Chandler and Mesa in exchange for such Community CAP Exchange Water pursuant to Subparagraphs 18.1.1 and 18.1.2 and in accordance with Exhibit 18.1.
- 2.138 "Replenishment", "Replenish" or "Replenishing" shall mean the replacement or preservation of Underground Water by a method provided for in Subparagraph 5.3.3.2.
- 2.139 "Report" for purposes of Subparagraph 5.3.12 shall have the meaning set forth therein.
- 2.140 "Roosevelt Irrigation District" shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

2.141 "Roosevelt Water Conservation District" or "RWCD" shall mean the entity of that name that is a political subdivision of the State and an irrigation district organized under the laws of the State.

2.142 "RWCD Agreement" shall mean the agreement among RWCD, the Community and the United States, dated May 10, 1999, and any amendment or revision thereof.

2.143 "RWCD CAP Water" shall mean that CAP NIA Priority Water currently held by the Secretary for the benefit of the Community pursuant to an agreement among the Secretary, the Community and RWCD pursuant to which RWCD relinquished its entitlement to CAP NIA Priority Water under that subcontract among the United States, CAWCD, and RWCD dated November 18, 1991, Contract No. 2-07-30-W0268, including any entitlement to CAP NIA Priority Water reallocated to RWCD under the Final Reallocation Decision published in the Federal Register, Volume 47, No. 24, on February 25, 1992, at page 4470 *et seq.* The Parties agree that the amount of RWCD CAP Water is eighteen thousand six hundred (18,600) AFY of CAP NIA Priority Water.

2.144 "RWCD Surface Water" shall mean RWCD's contribution of up to four thousand five hundred (4,500) AFY of Surface Water that RWCD is required to deliver to the Community pursuant to section 5.0 of the RWCD Agreement and that is listed in Subparagraph 4.1 of this Agreement.

February 4, 2003

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2.144A “Safford Agreement” shall mean that agreement among the Community, SCIDD, the United States and the City of Safford attached as Exhibit 26.1.

2.145 “Salt River Reservoir System” shall mean the four reservoirs operated by SRP on the Salt River created by the impoundment of water behind Stewart Mountain Dam, Mormon Flat Dam, Horse Mesa Dam, and Theodore Roosevelt Dam and any dams that are constructed after the Effective Date to the extent that they replace then-existing storage capacity of any of those four dams.

2.146 “San Carlos Irrigation and Drainage District” or “SCIDD” shall mean the entity of that name that is a political subdivision of the State and an irrigation and drainage district organized under the laws of the State. SCIDD is the non-Indian component of the San Carlos Indian Irrigation Project.

2.146A “San Manuel CC&N” shall mean that service area shown on the map in Exhibit 2.146A.

2.146B “San Pedro Ag and New Large Industrial Use Impact Zone” shall mean the lands identified as such on the maps set forth in Exhibit 2.146B contiguous to the San Pedro River from its confluence with the Gila River to the border with the Republic of Mexico and contiguous to Aravaipa Creek from its confluence with the San Pedro River to its source.

2.146C “San Pedro M&I and Domestic Purposes Impact Zone” shall mean the lands identified as such on the maps set forth in Exhibit 2.146C contiguous to the San Pedro River from its

February 4, 2003

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confluence with the Gila River to the Cochise County line and contiguous to Aravaipa Creek
from its confluence with the San Pedro River to its source.

2.147 "San Tan Irrigation District" shall mean the entity of that name that is a political
subdivision of the State and an irrigation district organized under the laws of the State.

2.148 "SCIIP", "SCIP", or "San Carlos Indian Irrigation Project", shall mean that project
authorized pursuant to the Act of June 7, 1924, 43 Stat. 475, and expanded pursuant to the Act of
March 7, 1928, 45 Stat. 200, 210.

2.149 "SCIIP-IW" shall mean the San Carlos Indian Irrigation Project-Indian Works, the Indian
component of the San Carlos Indian Irrigation Project.

2.150 [Intentionally not used].

2.151 "Secretary" shall mean the Secretary of the United States Department of the Interior or
his or her duly authorized representative.

2.152 "Settlement Water Budget" shall mean six hundred fifty-three thousand five hundred
(653,500) AFY of water from the sources described in Subparagraph 4.1.

2.153 "Southside Replenishment Program" shall mean the program established in accordance
with Subparagraph 5.3 to protect the Reservation from off-Reservation Pumping.

2.154 "Southside Replenishment Bank" shall mean the bank of water for Replenishment to be established by the State pursuant to Subparagraph 5.3.

2.155 "Southside Replenishment Bank IGA" shall mean the On-Reservation Southside Replenishment Bank Intergovernmental Agreement between the Community and the State described in Subparagraph 5.3.4.

2.156 "Special Hot Lands" shall have the same meaning set forth in Exhibit 26.2.

2.157 "SRP" shall mean the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona corporation.

2.158 "SRP Annual Reservoir Operations Plan" shall mean the plan that is developed by SRP annually for the operation of SRP water supply facilities to supply water to SRP shareholders and other customers, as amended from time to time.

2.159 "SRP Exchange Water Account" shall mean the exchange water account created by SRP for the benefit of the Community pursuant to Subparagraph 13.2.

2.160 "SRP Exchange Water Credits" shall mean the exchange water credits provided by SRP to the Community pursuant to Paragraph 13.0.

2.161 "SRP Reservoirs" shall mean the six reservoirs operated by SRP on the Salt and Verde rivers created by the impoundment of water behind Stewart Mountain Dam, Mormon Flat Dam, Horse Mesa Dam, Theodore Roosevelt Dam, Horseshoe Dam, and Bartlett Dam, and any dams that are constructed after the Effective Date to the extent that they replace then-existing storage capacity of any of those six dams.

2.162 "SRP Stored Water" shall mean that amount of water credited to the Community by SRP from SRP Reservoirs pursuant to Paragraphs 7.0 and 12.0.

2.163 "SRP Reservoir Space" shall mean the capacity of the Salt River Reservoir System available to SRP to store water on a continuous basis for irrigation, power, municipal, industrial or other purposes, as periodically determined by sediment surveys. The amount of SRP Reservoir Space shall not exceed SRP's storage rights for these reservoirs as determined in the Gila River Adjudication Proceedings.

2.164 "SRRD" shall mean the Salt River Reservoir District as defined, on the Effective Date, in Article IV, Section 3, of the Articles of Incorporation of the Salt River Valley Water Users' Association.

2.165 "State" shall mean the State of Arizona. The State's participation as a Party shall be as described in Subparagraph 29.4 and shall not bind the State as to waiver of rights or release of

February 4, 2003
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claims for lands received by the State in trust for from the United States pursuant to the provisions of:

- (a) The Act of September 9, 1850, 9 Stat. 446 (creating the Territory of New Mexico;
- (b) The December 30, 1853 Treaty with Mexico, 10 Stat. 1031 (the Gadsden Purchase);
- (c) The Act of 1863, 12 Stat. 664 (creating the Territory of Arizona);
- (d) The Act of February 18, 1881, 21 Stat. 326 (University of Arizona 1881 Grant);
- (e) The Arizona-New Mexico Enabling Act of June 20, 1910, 36 Stat. 557; and
- (f) The Act of February 20, 1929, c. 280, § 2, 45 Stat. 1252 (land for miners' hospitals for disabled miners within said State).

2.166 [Intentionally not used].

2.167 "Subparagraph" shall mean a numbered subparagraph of this Agreement.

2.168 "Subsidence Damages" shall mean any injury to land, water, or other real property from the settling of geologic strata or cracking in the earth's surface of any length or depth, which settling or cracking is caused by Pumping.

2.169 "Successor in Interest to an Allottee" shall mean any person or entity that succeeds or has succeeded an Allottee to an interest in an allotment that is not held in trust.

February 4, 2003

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2.170 "Surface Water" shall mean all water that is appropriable under State law.

2.171 [Intentionally not used].

2.172 "Underground Storage Facility" shall mean a facility as described in Section 45-802.01(20), Arizona Revised Statutes, as amended.

2.173 "Underground Water" shall mean any water beneath the surface of the earth regardless of its legal characterization as appropriable or non-appropriable under any applicable law.

2.174 "United States" or "United States of America" shall mean the United States of America acting on behalf of the Community, Members, and Allottees, and in no other capacity except as specifically otherwise provided herein.

2.175 "Upper Gila River Watershed Maintenance Program" shall mean the program to be established by State law pursuant to the provisions of Exhibit 26.8.1.

2.176 "Use" for purposes of Paragraph 25.0 shall mean any beneficial use including in-stream flows, Recharge, underground storage, recovery or any other use recognized as beneficial under applicable law.

2.176A "UVD Agreement" shall mean the Agreement Among the Gila River Indian Community, the United States of America, the San Carlos Irrigation and Drainage District, the Franklin

February 4, 2003

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Irrigation District, the Gila Valley Irrigation District, and Certain Other Parties Located in the Upper Valley of the Gila River, a copy of which is attached as Exhibit 26.2.

2.176B “UVD Parties” shall mean all signatories of the UVD Agreement other than the Community, SCIDD and the United States.

2.177 “Water” for purposes of Paragraph 25.0 and Subparagraphs 2.104, 2.135, 2.182 and 27.2, when used without a modifying adjective, shall mean Groundwater, Surface Water, CAP water, Recharged Water or Effluent.

2.178 “Water Code” shall mean that ordinance to be adopted by the Community pursuant to Paragraph 23.0.

2.179 [Intentionally not used].

2.180 “Water Lease Charge” shall mean that amount described in Subparagraph 17.1.2 and as described in subparagraph 4.3 of the Lease Agreements.

2.181 “Water OM&R Trust Fund” shall mean the Gila River Indian Community Water OM&R Trust Fund established in accordance with Subparagraph 27.1.

February 4, 2003

Execution copy

2.182 “Water Rights” for purposes of Paragraph 25.0 and Subparagraphs 2.105, 2.182A,

2.182B, 16.7 and 29.22 shall mean any and all rights in or to Water under Federal, State or other law.

2.182A “Water Rights Appurtenant to NM 381 Acres” shall mean those Water Rights appurtenant to the three hundred eighty point eighty-one (380.81) acres described in paragraph IV(D)(1) of the decree in *Arizona v. California*, 376 U.S. 340, 349 (1964) located in the Virden Valley, New Mexico or on lands or for other uses to which such rights may be transferred or substituted; provided, however, that such lands remain subject to the oversight and reporting requirements set forth in said decree and in addition thereto that the State of New Mexico provide a copy of such records to the Globe Equity Enforcement Court on at least an annual basis.

2.182B “Water Rights for NM Domestic Purposes” shall mean those Water Rights for domestic purposes of up to two hundred sixty-five (265) acre-feet of water for consumptive use per annum described in paragraph IV(D)(2) of the decree in *Arizona v. California*, 376 U.S. 340,350 (1964).

2.183 “Water Storage Permit” shall mean a permit issued by the State pursuant to Section 45-831.01, Arizona Revised Statutes, as amended.

2.184 “Wells” for purposes of Subparagraphs 2.76 and 5.3.10 shall mean Coolidge Well #9 and Coolidge Well #10, collectively.

February 4, 2003
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2.185 “Western M&I Protection Zone” shall have the meaning set forth in the legal description in Exhibit 5.3.

2.186 “Western Municipal Protection Zone” shall have the meaning set forth in the legal description in Exhibit 5.3.

2.187 “Western Protection Zone” shall mean either the Western M&I Protection Zone or the Western Municipal Protection Zone.

2.188 “Western Protection Zones” shall mean both the Western M&I Protection Zone and the Western Municipal Protection Zone, as set forth in the legal description in Exhibit 5.3.

2.188A “Winkelman CC&N” shall mean that service shown on the map in Exhibit 2.188A.

2.189 “WQARF” for purposes of Paragraph 25.0 shall mean the Arizona Water Quality Assurance Revolving Fund, established pursuant to Section 49-282, Arizona Revised Statutes, as amended.

2.190 “Year” shall mean a calendar year. When not capitalized, the term “year” shall have the meaning set forth in the Paragraph or Subparagraph in which the term is used.

3.0 EXHIBITS

3.1 The following is a list of Exhibits attached to this Agreement. All of the Parties have reviewed and agree not to object to or contest the terms and conditions of the Exhibits in any judicial, administrative or legislative proceedings relating to the approval of this Agreement prior to the Enforceability Date; provided, however, that each Exhibit shall be binding only on the specific parties to such Exhibit unless expressly provided otherwise in Exhibit 25.11.A or Exhibit 25.11.B. Except as provided in Subparagraph 4.6, amendments to Exhibits shall be governed by Subparagraph 29.3. No Party shall have any right to object to an amendment to such an Exhibit except as provided in Subparagraphs 4.6 and 29.3. No Party shall have, by reason of this Agreement, any third-party enforcement or other rights under any Exhibit to which said Party is not a party, unless otherwise provided in the Exhibit or in Exhibits 25.11.A or 25.11.B. A definition in an Exhibit shall be confined to the Exhibit in which it appears unless such definition is specifically incorporated by reference in this Agreement or in another Exhibit.

<u>Paragraph No./ Exhibit No.</u>	<u>Description</u>
2.19B	Map showing BHP Wells
2.35	CAP Repayment Stipulation
2.82	Agreement between the United States of America and Salt River Valley Water Users' Association for Construction of Drain Ditch across the Gila River Indian Reservation, dated June 21, 1923
2.84A-1 to 7	Maps of Gila River Impact Zone
2.146A	Map of San Manuel CC&N

February 4, 2003
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2.146B-1 to 2	Maps of San Pedro Ag and New Large Industrial Use Impact Zone
2.146C	Maps of San Pedro M&I and Domestic Purposes Impact Zone
2.188A	Map of Winkelman CC&N
4.6A-B	Sample Reports Required by Subparagraph 4.6
5.3	Legal Description of Protection Zones
5.4.1.1	MSIDD/BOR Agreement
7.2	Maricopa Contract
8.1	Community's Master Repayment Contract
8.2	Community's CAP Water Delivery Contract
8.16.4.1	Secretary's Approach for Determining the Amount of Water Available to the Community During a Time of Shortage Under the Community's 1992 CAP Water Delivery Contract Prior to Amendment
10.1	Community/Phelps Dodge Agreement
11.1	[Intentionally not used].
12.1	Graph of Community's Entitlement to SRP Stored Water
12.13	Graph of Community's Entitlement to Blue Ridge Stored Water
12.13.4	Description of Blue Ridge fixed and variable operation, maintenance and replacement cost
17.1A	Lease Agreement among the Community, the United States and the City of Goodyear
17.1B	Lease Agreement among the Community, the United States and the City of Peoria
17.1C	Lease Agreement among the Community, the United States and the City of Phoenix
17.1D	Lease Agreement among the Community, the United States and the City of Scottsdale

February 4, 2003
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- 17.1.1A Form of Voluntary Assignment and Assumption Agreement among the Community, the United States and the City of [insert name of City]
- 17.1.1B Form of Assignment and Assumption Agreement among the Community, the United States and the City of [insert name of City]
- 18.1 Reclaimed Water Exchange Agreement among the Cities of Mesa and Chandler, the Community and the United States
- 19.1.1 Arlington Canal Company Agreement
- 19.1.2 Buckeye Irrigation Company Agreement
- 20.1 Agreement among the Community, SCIDD and the United States
- 21.0 Standard Form of CAP Subcontract for CAP M&I Priority Water
- 22.1 Toka Sticks trust land description
- 25.1 Waiver of Claims and Release Signed by the Parties other than the Community and the United States
- 25.2 Waiver of Claims and Release Signed by the Community and the United States for the Community and Members, but not for Members in their capacities as Allottees
- 25.2.1.6 List of Remediations Exempted from the Community's Waiver for Injuries to Water Quality
- 25.3 Waiver of Claims and Release Signed by the United States for Allottees for all claims other than claims for Subsidence Damages arising after the Enforceability Date
- 25.4 Waiver of Claims and Release Signed by the Community and the United States as to claims against SRP
- 25.5.1 Form of Waiver of Claims and Release to be Signed by the United States and individual Allottees upon Receipt by an Allottee of compensation for claims for Subsidence Damages arising after the Enforceability Date
- 25.5.2 Form of Waiver of Claims and Release to be Signed by the United States and Members upon Receipt by a Member of Compensation for Claims for Subsidence Damages arising after the Enforceability Date

February 4, 2003
Execution copy

- 25.5.3 Form of Waiver of Claims and Release to be Signed by the United States and the Community upon Receipt by the Community of Compensation for Claims for Subsidence Damages arising after the Enforceability Date
- 25.6.1.9A Current Tenants of Lone Butte Industrial Park
- 25.6.1.9B Former Tenants of Lone Butte Industrial Park
- 25.6.1.9C Contracts Between Community and Third Parties
- 25.6.1.9D Business Licenses Issued by the Community to Third Parties
- 25.11.A Stipulation and Form of Judgment and Decree in the Gila River Adjudication Proceedings
- 25.11.B Stipulation and Form of Judgment and Decree regarding the Globe Equity Decree
- 25.15.1 Waiver of Claims and Release signed by the Community against the United States
- 25.16.1 Waiver of Claims and Release signed by the United States in all of its capacities against the Community
- 25.17.1A-C Forms of Dismissal in *Gila River Indian Community vs. Gila Valley Irrigation District, et al.*
- 25.17.2A-B Forms of Dismissal in *United States vs. Roosevelt Water Conservation District, et al.*
- 25.17.3A-B Forms of Dismissal in *Gila River Indian Community vs. American Smelting and Refining Company, et al.*
- 26.1 Safford Agreement
- 26.2 UVD Agreement
- 26.3 Duncan Agreement
- 26.4 Kearny Agreement
- 26.5 Mammoth Agreement
- 26.6 Paloma Agreement

February 4, 2003
Execution copy

26.8.1	Minimum Requirements of State Legislation for Upper Gila River Watershed Maintenance Program
28.4.1	Claims of the Arizona Game and Fish Commission
29.5.2	Conditions to Relinquishment of CAP NIA Priority Water
29.7	Water Commissioner's Report of June 3, 1977
29.15A	Amendment to CAP Subcontracts other than for Hohokam water
29.15B1	Amendment No. 2 to Chandler's CAP Water Service Subcontract for Hohokam water
29.15B2	Amendment No. 2 to Mesa's CAP Water Service Subcontract for Hohokam water
29.15B3	Amendment to Phoenix's Subcontract for Hohokam water
29.15B4	Amendment to Scottsdale's Subcontract for Hohokam water
29.17	Form of the Act
29.18	Elements of State legislation
29.21	Subsidence Damages

4.0 COMMUNITY'S WATER RIGHTS

4.1 The Community and the United States shall have the following rights to water, which shall be held in trust by the United States on behalf of the Community:

<u>SOURCE</u>	<u>AMOUNT</u>	<u>REFERENCE</u>
Underground Water	156,700 AFY	as set forth in Paragraph 5.0
Globe Equity Decree Water	125,000 AFY	as set forth in Paragraph 6.0
Haggard Decree Water	5,900 AFY	as set forth in Paragraph 7.0
Community CAP Indian Priority Water	173,100 AFY	as set forth in Subparagraph 8.3.1
RWCD CAP Water	18,600 AFY	as set forth in Subparagraph 8.3.3
RWCD Surface Water	4,500 AFY	as set forth in the RWCD Agreement
HVID CAP Water	18,100 AFY	as set forth in Subparagraph 8.3.5
Asarco CAP Water ¹	17,000 AFY	as set forth in Subparagraph 8.3.4
SRP Stored Water ²	20,000 AFY	as set forth in Paragraph 12.0
Chandler Contributed Reclaimed Water	4,500 AFY	as set forth in Paragraph 18.0
Mesa Reclaimed Water Exchange Premium	5,870 AFY	as set forth in Paragraph 18.0
Chandler Reclaimed Water Exchange Premium	2,230 AFY	as set forth in Paragraph 18.0
New CAP NIA Priority Water	102,000 AFY	as set forth in Subparagraph 8.3.2
TOTAL	653,500 AFY	

¹ Subject to completion of ongoing negotiations between the Community and Asarco.

² SRP has conditionally agreed to provide an average of five hundred (500) AFY of Blue Ridge Stored Water to the Community pursuant to Subparagraph 12.13. In the event the conditions in Subparagraph 12.13.1 are satisfied, the amount of water listed in Subparagraph 4.1 to be provided by SRP shall increase to twenty thousand five hundred (20,500) AFY and the amount of Underground Water listed in Subparagraph 4.1 shall be reduced to one hundred fifty-six thousand two hundred (156,200) AFY.

February 4, 2003

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4.1.1 The Community and the United States recognize that, pursuant to 25 U.S.C. §381, allotted lands within the Reservation have an appurtenant right to an allocation by the Community for irrigation purposes of the water set forth in Subparagraph 4.1. The Community shall enact the Water Code, pursuant to which the Community shall regulate, among other things, such allocation by the Community. The Water Code shall provide Allottees a process to enforce this right against the Community. Nothing in this Subparagraph shall be construed to authorize any action, claim or suit by an Allottee against any person, entity, corporation, municipal corporation, tribal governments, or the United States under Federal, State or other law.

4.1.2 Except as otherwise provided in this Agreement, the quantities of water associated with the sources described in Subparagraph 4.1 shall not be construed to limit or guarantee the quantities of water available from those sources in any Year.

4.2 The Community, Members, Allottees, and the United States, collectively, shall not Divert for use on the Reservation more than an average of six hundred fifty-three thousand five hundred (653,500) AFY of water from any combination of sources, calculated as provided in this Subparagraph 4.2 and Subparagraphs 4.3, 4.4 and 4.5 whether or not such sources are listed in Subparagraph 4.1.

4.2.1 For purposes of determining compliance with the limitations on total Diversions of this Subparagraph 4.2, the Community, Members, Allottees, and the United States, collectively, may Divert more than six hundred fifty-three thousand five hundred (653,500) acre-feet of water in any Year or Years, provided that such Diversions, as calculated herein, shall not exceed in the

February 4, 2003

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aggregate six million five hundred thirty-five thousand (6,535,000) acre-feet for any period of ten (10) consecutive Years, reckoned in continuing progressive series, beginning on January 1 of the Year immediately succeeding the Year in which the Enforceability Date occurs. In no Year may the Community, Members, Allottees, and the United States, collectively, Divert an amount of water that would cause the aggregate Diversions for any period of ten (10) consecutive Years to exceed six million five hundred thirty-five thousand (6,535,000) acre-feet.

4.2.2 Subject to the restrictions on Pumping during the Build-Out Period as described in Subparagraph 4.5.2, the Community, Members, Allottees, and the United States, collectively, shall be entitled to Divert Underground Water in amounts greater than one hundred fifty-six thousand (156,700) acre-feet in any Year or Years so long as Diversions from all sources of water do not exceed an average of six hundred fifty-three thousand five hundred (653,500) AFY, calculated as provided in this Subparagraph 4.2.

4.3 Except as provided in Subparagraph 4.5 for the Build-Out Period and subject to the exceptions in Subparagraph 4.4, the following shall be treated each Year as having been Diverted by the Community, Members, Allottees, or the United States for use on the Reservation for purposes of implementing the limitation of Subparagraph 4.2:

4.3.1 All water, other than the Reclaimed Water Exchange Premium, Diverted each year by the Community, Members, Allottees, or the United States from any of the sources listed in Subparagraph 4.1;

February 4, 2003

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4.3.2 All Community CAP Water leased to others without regard to the quantity of water actually delivered under the terms of such lease agreements;³

4.3.3 All Community CAP Water available for delivery to or for the benefit of the Community, not accounted for under Subparagraphs 4.3.1 or 4.3.2, less any reduction in such entitlement as a result of any shortage of Community CAP Water as described in Subparagraph 8.16;

4.3.4 All Mesa Reclaimed Water made available to the Community each Year and that the Community accepts or is required to accept pursuant to Exhibit 18.1;

4.3.5 All Chandler Reclaimed Water made available to the Community each Year and that the Community accepts or is required to accept pursuant to Exhibit 18.1;

4.3.6 All water from any of the sources listed in Subparagraph 4.1 delivered each Year by the Community or the United States to persons other than the Community, Members, Allottees, or the United States in exchange for other water;

4.3.7 All water Diverted each Year by the Community, Members, Allottees, or the United States from any source other than the sources listed in Subparagraph 4.1 for use on the Reservation;

4.3.8 [Intentionally not used].

³ In the event the Community and Asarco conclude an agreement for lease and exchange of Asarco CAP Water, this

4.4 The following shall be exceptions to Subparagraphs 4.3 and 4.5 and shall not be treated in any Year as having been Diverted by the Community, Members, Allottees, or the United States for use on the Reservation for purposes of implementing the limitation of Subparagraph 4.2:

4.4.1 Surface Water Diverted from the Gila River at Ashurst-Hayden Dam by or for the Community, Members, Allottees, or the United States at any time or times when water is spilling over Ashurst-Hayden Dam;

4.4.2 Water received by the Community, Members, Allottees, or the United States as Replenishment or Southside Replenishment Bank water pursuant to Subparagraphs 5.3 or 5.4;

4.4.3 Underground Water Diverted in order to alleviate water logging of Reservation lands;

4.4.4 Effluent, agricultural return flows, and any surface drainage water developed on the Reservation and used by the Community, Members, Allottees, or the United States on the Reservation;

4.4.5 Community CAP Exchange Water;

subparagraph shall be amended as necessary to reflect appropriate accounting for same.

February 4, 2003

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4.4.6 Water received by the Community, Members, Allottees, or the United States in exchange for water made available from any of the sources listed in Subparagraph 4.1 to persons other than the Community, Members, Allottees, or the United States, excluding Reclaimed Water that is treated as having been Diverted pursuant to Subparagraphs 4.3.4 or 4.3.5;

4.4.7 Water stored by the Community for persons other than the Community, Members, Allottees, or the United States and recovered by or for persons other than the Community, Members, Allottees, or the United States pursuant to an intergovernmental agreement between the Community and ADWR or the Arizona Water Banking Authority;

4.4.8 Any water, not accounted for under Subparagraph 4.4.7, recovered by the Community or the United States from an Underground Storage Facility pursuant to an intergovernmental agreement between the Community and ADWR to the extent that the recovered water was accounted for, pursuant to Subparagraphs 4.3 or 4.5, as having been Diverted by the Community for use on the Reservation when stored;

4.4.9 Any Excess CAP Water delivered to the Community, Members, Allottees, or the United States by CAWCD for use off the Reservation;

4.4.10 Effluent purchased or acquired by the Community, Members, Allottees, or the United States other than as provided in Subparagraphs 18.1.1, 18.1.2 and 18.1.3, and Exhibit 18.1;

February 4, 2003
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4.4.11 Any Excess CAP Water, other than Replenishment or Southside Replenishment Bank water, delivered by CAWCD to the Community or the United States for storage in an Underground Storage Facility pursuant to an intergovernmental agreement between the Community and ADWR, if:

4.4.11.1 The stored Underground Water is Diverted to supplement the Community's CAP Water supplies only during a Year or Years of shortage of such supplies as described in Subparagraph 8.16;

4.4.11.2 The storage account established for the Community under such agreement is required to be debited for Diversions of the stored Underground Water by the Community, Members, Allottees, or the United States that occur during the Year of shortage; and

4.4.11.3 The amounts of the stored Underground Water debited against the storage account in any Year are treated as having been Diverted by the Community, Members, Allottees, and the United States for use on the Reservation in that Year;

4.4.12 SRP drain water, except as provided in Subparagraph 12.5;

4.4.13 Any Surface Water acquired by the Community or the United States after the Effective Date pursuant to the provisions of State law relating to the severance and transfer of rights to Surface Water, and used in any Year for M&I Uses on the Reservation, if and to the extent that

February 4, 2003

Execution copy

on-Reservation use of water for M&I Uses exceeds twenty thousand (20,000) acre-feet in such Year,

4.4.14 Any Surface Water acquired by the Community or the United States after the Effective Date, pursuant to the provisions of State law relating to the severance and transfer of rights to Surface Water, and used for Irrigation Uses on the Reservation, if at the time of the Community's application for severance and transfer:

4.4.14.1 The laws of the State have been changed after the Effective Date to allow more than two hundred seventy-five thousand (275,000)⁴ acres to be used for Irrigation Uses in any Year within the geographic region currently denominated as the Pinal AMA;

4.4.14.2 The laws of the State have been changed after the Effective Date to allow more than two hundred eighty thousand (280,000)⁵ acres to be used for Irrigation Uses in any Year within the geographic region currently denominated as the Phoenix AMA; or

4.4.14.3 The laws of the State are enforced after the Effective Date in such a manner as to allow the irrigation of acres without an Irrigation Grandfathered Right in either of the geographic regions specified in Subparagraphs 4.4.14.1 and 4.4.14.2;

⁴ It is recognized by the Parties that as of October 31, 2001, State law allows more than two hundred seventy-five thousand (275,000) acres to be used for Irrigation Uses in the Pinal AMA in any Year.

4.4.15 Any Surface Water acquired by the Community or the United States after the Effective Date other than as provided in Subparagraphs 4.4.13 and 4.4.14, if approved by acts of both the U. S. Congress and the State Legislature after the Effective Date; and

4.4.16 Subject to the provisions of Subparagraph 12.5.1, all water that flows onto or through the Reservation and that: (1) has not been ordered, scheduled or requested for delivery and (2) the Community does not store or use for an Irrigation Use, an M&I Use or Domestic Purposes.

4.4.17 Up to six hundred thirty-six (636) AFY of Community CAP Water, Exchange Reclaimed Water and RWCD Surface Water (subject to agreement with RWCD) delivered each Year by the Community or the United States to the Toka Sticks trust land described in Exhibit 22.1.

4.5 Build-Out Period.

4.5.1 For purposes of implementing the limitation of Subparagraph 4.2 during the Build-Out Period, only the following Community CAP Water or Excess CAP Water shall be treated each Year as having been Diverted by the Community, Members, Allottees, or the United States for use on the Reservation:

⁵ It is recognized by the Parties that as of October 31, 2001, State law allows more than two hundred eighty thousand (280,000) acres to be used for Irrigation Uses in the Phoenix AMA in any Year.

February 4, 2003

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4.5.1.1 Water delivered to the Community or the United States through the CAP System each Year (other than any Excess CAP Water delivered to the Community, Members, Allottees, or the United States by CAWCD for use off the Reservation);

4.5.1.2 Community CAP Water leased to others without regard to the quantity of water actually delivered under the terms of such lease agreements;⁶ and

4.5.1.3 Except for Community CAP Exchange Water, Community CAP Water delivered each Year by the Community or the United States to persons other than the Community, Members, or Allottees in exchange for other water.

4.5.2 Notwithstanding anything in Paragraph 4.0 to the contrary, the Community, Members, Allottees, and the United States, collectively, shall not Divert more than one hundred ninety thousand (190,000) acre-feet of Underground Water on the Reservation in any Year during the Build-Out Period.

4.5.3 All other terms and conditions of Paragraph 4.0 shall be in effect during the Build-Out Period.

4.6 Beginning on March 1 of the first Year following the Year in which the Enforceability Date occurs, and on March 1 of each Year thereafter, the Community shall file with the Gila River Adjudication Court, a report, in the applicable forms set forth in Exhibits 4.6A and 4.6B or

February 4, 2003
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as may otherwise be required by the Gila River Adjudication Court, showing: (1) all amounts of water, by source, Diverted under Subparagraph 4.3 (Exhibit 4.6A) or under Subparagraph 4.5 if prior to the end of the Build-Out Period (Exhibit 4.6B), by the Community, Members, Allottees, and the United States, collectively, in the Year immediately preceding the Year in which the report is filed; and (2) all amounts of water enumerated in Subparagraph 4.4 that were treated by the Community as not having been Diverted in the Year immediately preceding the Year in which the report is filed. The Community shall give notice by serving a copy of each such report to each Party as provided in Subparagraph 29.23 and as may otherwise be required by the Gila River Adjudication Court. Beginning with the eleventh Year following the Year in which the Enforceability Date occurs, such report shall include the calculation required by Subparagraph 4.2.1. The Community shall prepare and maintain such records as may be necessary to file such reports. Any Party may petition the Gila River Adjudication Court to modify the forms set forth in Exhibits 4.6A and 4.6B to ensure accurate reporting of the Community's water use. Any other Party may object to such petition.

4.7 Except for water not counted against the Settlement Water Budget pursuant to Subparagraph 4.4.17, uses of Excess CAP Water, exchanges of CAP water involving water other than Community CAP Water, uses of Community CAP Water as authorized by Paragraphs 8.0 and 22.0, and for leases and exchanges involving water from the CAP System as authorized by Paragraphs 8.0, 10.0, 13.0, 17.0, 18.0 or 21.0 and Exhibits 8.2, 10.1, 17.1A, 17.1B, 17.1C, 17.1D and 18.1,⁷ no water available for use by the Community, Members, Allottees, or the United

⁶ In the event the Community and Asarco conclude a lease and exchange agreement for the Asarco CAP Water, this provision shall be amended as necessary to account appropriately for such water.

⁷ In the event that the Community and Asarco conclude a lease and exchange agreement for Asarco CAP Water prior to the enactment of the Act, this Subparagraph 4.7 shall be amended to reflect such agreement as being authorized by this Agreement.

February 4, 2003

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States under this Agreement may be sold, leased, transferred or in any way used off the Reservation. The Community, Members, Allottees, and the United States shall not transport Groundwater onto the Reservation from off-Reservation lands; provided, however, that nothing in this Agreement shall prohibit the delivery of water by RWCD, SCIIP or SRP to the Community that is commingled with off-Reservation Groundwater; and provided further that a city, town or private water company may provide water service from its operating distribution system for Domestic Purposes on the Reservation. Excess CAP Water may be delivered to the Community by the CAP Operating Agency for uses on or off the Reservation.

5.0 UNDERGROUND WATER

5.1 The Community, Members and Allottees shall have the right to Divert Underground Water from points located within the Reservation as provided in Paragraph 4.0, subject to such further limitations as may be provided by the Water Code.

5.1.1 The Community shall install and maintain devices capable of measuring and recording all Diversions of Underground Water by or on behalf of the Community. The Community shall use its best efforts to maintain the accuracy of the measuring and recording devices in accordance with industry standards. The Community shall have no obligation to replace any Diversion measuring devices that meet the accuracy standards of the preceding sentence.

5.2 [Intentionally not used].

5.3 Southside Replenishment Program.

5.3.1 The Parties, other than the United States, agree to the establishment of the Southside Replenishment Program to protect the Reservation from the effects of off-Reservation Pumping. It will be necessary to change State law to establish the Southside Replenishment Program. For purposes of establishing the Enforceability Date, the date of establishment of the Southside Replenishment Program will be the date on which the Secretary, with the concurrence of the Community, and the Director of the ADWR certify in writing that State legislation has been

February 4, 2003

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enacted that: (1) meets the minimum requirements set forth in Subparagraph 5.3, and (2) shall take effect not later than the Enforceability Date. Should such State legislation thereafter be repealed or amended so as not to provide the protection set forth in Subparagraph 5.3, the State shall, notwithstanding such repeal or amendment, continue to fulfill the Replenishment obligations to the Community set forth in Subparagraph 5.3.

5.3.2 The Southside Replenishment Program shall, at a minimum:

5.3.2.1 Establish the Eastern Protection Zone North, the Eastern Protection Zone South, the Central Protection Zone, the Western M&I Protection Zone, and the Western Municipal Protection Zone in the Pinal AMA all as described in Exhibit 5.3;

5.3.2.2 Establish the Southside Replenishment Bank as set forth in Subparagraph 5.3.4;

5.3.2.3 Provide for the Underground Water export prohibitions contained in Subparagraph 5.3.8;

5.3.2.4 Provide for the Replenishment obligations of the State as described in Subparagraph 5.3.3;

5.3.2.5 Provide for the enforcement of the Southside Replenishment Program by the Director of ADWR.

5.3.3 Replenishment.

- 5.3.3.1 Replenishment by the State shall be required to the extent that, in any Year after the Year in which the Enforceability Date occurs:
- 5.3.3.1.1 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Western M&I Protection Zone is in excess of 2.0 acre-feet per acre;
- 5.3.3.1.2 The Average Annual Municipal Water Pumped Per Acre in the Western Municipal Protection Zone is in excess of 2.0 acre-feet per acre;
- 5.3.3.1.3 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Eastern Protection Zone North is in excess of 2.33 acre-feet per acre;
- 5.3.3.1.4 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Eastern Protection Zone South is in excess of 2.33 acre-feet per acre;
- 5.3.3.1.5 The Pumping for Irrigation Use in the Western Protection Zones is in excess of the cumulative amount of Groundwater the holders of Irrigation Grandfathered Rights are permitted to withdraw annually in the Western Protection Zones in accordance with both the Groundwater Code and the Base Agricultural Program within the Third Management Plan, as finally adopted by ADWR for the Pinal AMA; provided, however, that (1) for purposes of this Subparagraph 5.3.3.1.5, the Western Protection Zones will

be considered a single area with its own Replenishment obligations; and
(2) Imported Water that is put to an Irrigation Use within the Western Protection Zones shall not be included in the calculation of Pumping for Irrigation Use set forth in this Subparagraph 5.3.3.1.5.

5.3.3.1.6 The Pumping for Irrigation Use in the Eastern Protection Zones is in excess of the cumulative amount of Groundwater the holders of Irrigation Grandfathered Rights are permitted to withdraw annually in the Eastern Protection Zones in accordance with both the Groundwater Code and the Base Agricultural Program within the Third Management Plan, as finally adopted by ADWR for the Pinal AMA; provided, however, that (1) for purposes of this Subparagraph 5.3.3.1.6, the Eastern Protection Zones will be considered a single area with its own Replenishment obligations; and
(2) Imported Water that is put to an Irrigation Use within the Eastern Protection Zones shall not be included in the calculation of Pumping for Irrigation Use set forth in this Subparagraph 5.3.3.1.6.

5.3.3.1.7 There is Excess Pumping that the State is required to Replenish pursuant to Subparagraph 5.3.10.4.

5.3.3.2 Replenishment shall, at the option of the State or the Replenishing entity, be accomplished by: (1) direct delivery, (2) extinguishment of Long-Term Storage Credits pursuant to Subparagraphs 5.3.3.2.2 or 5.3.3.2.3, or (3) debiting the

February 4, 2003
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Community account in the Southside Replenishment Bank established pursuant to
Subparagraph 5.3.4.

5.3.3.2.1 When Replenishment is accomplished by direct delivery, no delivery of
water to the Reservation for Replenishment will be made by or for the
State without the Community's express written consent, which consent
shall describe the locations, times, quantities and other details of water
delivery.

5.3.3.2.2 In each of Western Protection Zones, Replenishment may be accomplished
by extinguishing Long-Term Storage Credits that were earned: (1) in
accordance with State law within the five (5) Years immediately prior to
the Year in which such extinguishment occurs, and (2) within either of the
Western Protection Zones.

5.3.3.2.3 In each of the Eastern Protection Zones, Replenishment may be
accomplished by extinguishing Long-Term Storage Credits that were
earned: (1) in accordance with State law within the seven (7) Years
immediately prior to the Year in which such extinguishment occurs, and
(2) within either of the Eastern Protection Zones.

5.3.4 Southside Replenishment Bank.

February 4, 2003
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- 5.3.4.1 The State shall establish the Southside Replenishment Bank, and shall, beginning in the first Year following the Year in which the Enforceability Date occurs, at its expense, store not less than one thousand (1,000) acre-feet each Year on the Reservation, by delivery of water to the Reservation boundary, to be credited to the Community's account in the Southside Replenishment Bank until the balance of the Community's account in the Southside Replenishment Bank has reached fifteen thousand (15,000) acre-feet. All deliveries of Replenishment water to the Community by the State pursuant to Subparagraph 5.3.4 shall be made in accordance with the delivery procedures that will be set forth in the Southside Replenishment Bank IGA. These procedures will include the method by which the Community will schedule and order water from the State with sufficient advance notice to the State for it to make such deliveries.
- 5.3.4.2 The State shall not be required to deliver more than eleven percent (11%) of the annual water delivery described in Subparagraph 5.3.4.1 to the Southside Replenishment Bank in any one month.
- 5.3.4.3 The Community shall only order water for delivery to the Southside Replenishment Bank at delivery points on the CAP System that have, at the time of the scheduled delivery, capacity available to the Community to accommodate such delivery. The delivery requirement shall be satisfied when the quantity of water ordered by the Community is available for Diversion at the requested

February 4, 2003
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delivery point. The Community shall accept delivery and Divert all such water delivered to it by the State at the requested delivery point.

5.3.4.4 To the extent that Replenishment required under Subparagraph 5.3.3 is not accomplished by direct delivery or extinguishment of Long-Term Storage Credits pursuant to Subparagraph 5.3.3.2, the Southside Replenishment Bank shall, no later than June 1 of the third (3rd) Year after the Exceedance Year in question, be debited the amount by which:

5.3.4.4.1 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Exceedance Year in question exceeded 2.33 acre-feet per acre in the Eastern Protection Zone North;

5.3.4.4.2 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Exceedance Year in question exceeded 2.33 acre-feet per acre in the Eastern Protection Zone South;

5.3.4.4.3 The Average Annual Municipal and Industrial Water Pumped Per Acre in the Exceedance Year in question exceeded 2.0 acre-feet in the Western M&I Protection Zone;

February 4, 2003
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- 5.3.4.4.4 The Average Annual Municipal Water Pumped Per Acre in the Exceedance Year in question exceeded 2.0 acre-feet in the Western Municipal Protection Zone; and
- 5.3.4.5 To the extent that Replenishment required under Subparagraph 5.3.10.4 is not accomplished by direct delivery or extinguishment of Long-term Storage Credits pursuant to Subparagraph 5.3.3.2, the Southside Replenishment Bank shall, no later than June 1 of the third (3rd) Year after the Exceedance Year in question, be debited by the amount of Excess Pumping that the State is required to Replenish pursuant to Subparagraph 5.3.10.4.
- 5.3.4.6 To the extent that Replenishment required under Subparagraphs 5.3.3.1.5 and 5.3.3.1.6 is not accomplished by direct delivery or extinguishment of Long-Term Storage Credits, the Southside Replenishment Bank shall, not later than June 1 of the fifth (5th) Year after the Exceedance Year, be debited by the amount not yet Replenished for the Exceedance Year.
- 5.3.4.7 The State shall replace water in the Southside Replenishment Bank for debits incurred as necessary to ensure that the Community's account balance does not fall below five thousand (5,000) acre-feet.
- 5.3.5 In the Central Protection Zone, neither the State nor ADWR shall allow implementation of Groundwater conservation programs any less restrictive than those finally adopted by ADWR,

February 4, 2003

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following resolution of reviews and appeals, in the Third Management Plan for the Pinal AMA.

This provision shall not prohibit the State from allowing implementation, if appropriate, of Groundwater conservation programs less restrictive than those adopted in the Third Management Plan for any parts of the Pinal AMA that are outside of the Central Protection Zone.

5.3.6 All of the Parties, other than the United States, shall seek State legislative approval of the Southside Replenishment Program as set forth in Subparagraph 5.3.

5.3.7 Wells that Pump water for Domestic Purposes shall be allowed to be used in the Protection Zones in the same manner and to the same extent as such wells are allowed to be used in accordance with Section 45-454, Arizona Revised Statutes; provided, however, that in no event shall any well that has the capacity to Pump more than thirty-five (35) GPM be considered a well that Pumps water for Domestic Purposes for purposes of this Subparagraph 5.3.7. Water Pumped from wells that Pump water for Domestic Purposes shall not be counted against the acre-feet limitations set forth in Subparagraph 5.3.

5.3.8 Underground Water Export Prohibition for an Industrial Use or a Municipal Use.

5.3.8.1 Except as provided in Subparagraph 5.3.8.2, no water Pumped after the Enforceability Date within either of the two Eastern Protection Zones or either of the two Western Protection Zones shall be transported outside of that Protection Zone for:

February 4, 2003
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- 5.3.8.1.1 A New Use; or
- 5.3.8.1.2 A Non-Irrigation Use in excess of the highest amount transported outside of that Protection Zone during the Years 1999, 2000, or 2001 for such Non-Irrigation Use.
- 5.3.8.2 The limitations on transportation of water Pumped within a Protection Zone set forth in Subparagraph 5.3.8.1 will not apply to the extent such transported water is:
- 5.3.8.2.1 Replenished by the transporter, in accordance with Subparagraph 5.3.4, within twenty-four (24) months after the end of the Year in which the transportation occurs;
- 5.3.8.2.2 Replaced by Imported Water in the Year in which the transportation occur;
- 5.3.8.2.3 Pumped in one of the Eastern Protection Zones and used in the other Eastern Protection Zone; or
- 5.3.8.2.4 Pumped in one of the Western Protection Zones for Municipal Use and used in the other Western Protection Zone for Municipal Use.

February 4, 2003
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5.3.8.3 Except as provided in Subparagraph 5.3.10.2.2, water Pumped in one Eastern Protection Zone and used for Municipal Use or Industrial Use in the other Eastern Protection Zone shall be counted against the 2.33 acre-feet per acre limitation in the Eastern Protection Zone in which such Pumping occurs. Water Pumped in one Western Protection Zone and used in the other Western Protection Zone for Municipal Use shall be counted against the 2.0 acre-feet per acre limitation in the Western Protection Zone in which such Pumping occurs.

5.3.9 City of Coolidge and Town of Florence. The City of Coolidge and the Town of Florence shall not drill any new wells within the Protection Zones.

5.3.10 Arizona Water Company.

5.3.10.1 Pumping for Municipal Use and Industrial Use by Arizona Water Company from wells within the Protection Zones is subject to the provisions of Subparagraph 5.3, except as provided otherwise in this Subparagraph 5.3.10.

5.3.10.2 AWC's Coolidge System includes the Wells, which are located in the Eastern Protection Zone North near the Reservation boundary. When AWC determines that either of the Wells must be replaced, the first such replacement well shall be located outside the Protection Zones. AWC shall replace the second of the Wells outside the Eastern Protection Zone

February 4, 2003
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North when AWC determines that the second of the Wells must be replaced. The second replacement well may be located within the Eastern Protection Zone South.

5.3.10.2.1 Water Pumped by AWC from any well located in an Eastern Protection Zone and transported to the other Eastern Protection Zone shall not be considered as water transported outside the Eastern Protection Zones.

5.3.10.2.2 For purposes of Subparagraph 5.3, all uses served by AWC in the Eastern Protection Zone North shall be considered New Uses. All Underground Water transported by AWC from the Eastern Protection Zone South to the Eastern Protection Zone North shall be treated as having been Pumped from the Eastern Protection Zone North and shall be counted against the Average Annual Municipal and Industrial Water Pumped Per Acre within the Eastern Protection Zone North, in accordance with Subparagraph 5.3.

5.3.10.3 AWC may Pump up to one thousand two hundred seventy five (1,275) AFY from the Wells and all other AWC wells located in the Eastern Protection Zone South, collectively, and transport such water outside the Eastern Protection Zones without Replenishment.

5.3.10.4 If AWC Pumps more than a total of one thousand two hundred seventy five (1,275) AFY from the Wells and all other wells located within the

Eastern Protection Zone South, collectively, and transports such water outside the Eastern Protection Zones, each acre-foot of such Excess Pumping shall be Replenished in accordance with this Subparagraph 5.3. Notwithstanding the provisions of Subparagraph 5.3.8, the State shall Replenish such Excess Pumping in accordance with the State legislation required under Subparagraphs 5.3.1 and 5.3.2. The State's obligation to Replenish for such Excess Pumping shall terminate on December 31, 2023. After December 31, 2023, AWC shall Replenish all such Excess Pumping.

5.3.10.5 Subject to any required approval by the Secretary and CAWCD, AWC shall make available to the State, for use in Replenishment required by the State under Subparagraph 5.3.10.4, that portion of AWC's Coolidge System CAP allocation that is not used or committed for service to AWC's customers. AWC shall continue to pay the CAP water service charges associated with any portion of its CAP allocation used by the State for such Replenishment, with the State paying for all other costs associated with such Replenishment.

5.3.10.6 AWC shall not drill any new or replacement wells in the Eastern Protection Zone North. In addition, AWC shall not develop any new wells within the Eastern Protection Zone South other than the replacement well permitted by Subparagraph 5.3.10.2 and other than new wells needed by

AWC to provide water service to New Uses within the Eastern Protection Zones.

5.3.11 Groundwater Storage and Recovery. Nothing in Subparagraph 5.3 shall affect the rights of any person or entity in the Pinal AMA to store Imported Water or Effluent underground after the Effective Date and recover such water pursuant to State law for transportation outside of a Protection Zone without incurring Replenishment obligations, provided that the storage was not done for purposes of Replenishment pursuant to Subparagraph 5.3.3.

5.3.12 Reporting. Beginning on June 1 of the Year following the Year in which the Enforceability Date occurs and on June 1 of each Year thereafter, ADWR shall send to the Community a report for each of the Protection Zones for the previous Year: (1) summarizing the amount of water Pumped for Municipal Use and Industrial Use; (2) calculating the amount of Pumping for which Replenishment is required pursuant to Subparagraph 5.3, including Excess Pumping; (3) reporting the amount of and means by which Replenishment occurred; (4) listing and describing the transactions that occurred in the Southside Replenishment Bank; and (5) containing the information necessary to determine compliance with Subparagraph 5.3.8 ("Report"). On reasonable notice, the Community shall have the right to examine the books and records on which the Report is based.

5.4 Additional Southside Irrigation Pumping Protection

5.4.1 MSIDD and CAIDD.

5.4.1.1 CAIDD shall cause the CAP Operating Agency to deliver Excess CAP Water to MSIDD to be used in lieu of Pumping in areas within MSIDD under the circumstances described in Subparagraph 5.4.1. If MSIDD requires additional Excess CAP Water in order to remain within the pumping limitations of paragraph 5.C. of the MSIDD/BOR Agreement, MSIDD shall invoke the provisions of this Subparagraph 5.4.1.1. In such event, MSIDD shall determine the exact quantity needed and provide written notification to that effect to CAIDD and the CAP Operating Agency. Upon receipt of such notification, CAIDD shall cause up to seven thousand (7,000) acre-feet of Excess CAP Water available to CAIDD to be delivered to MSIDD in that Year; provided, however, that in any Year in which CAIDD has less than ten thousand (10,000) acre-feet of Excess CAP Water available to it at the rate equal to the CAP Pumping Energy Charge, determined consistent with Subparagraph 5.4.1.2.2, CAIDD shall have no obligation to deliver to MSIDD any of the Excess CAP Water available to CAIDD in that Year. For purposes of CAIDD's delivery of water to MSIDD, MSIDD and CAIDD shall, prior to the Enforceability Date, enter into an agreement between them that describes the ordering, delivery and payment procedures necessary to accomplish the purposes of this Subparagraph 5.4.1 and shall thereafter comply with the same.

5.4.1.2 CAIDD and MSIDD shall comply with the requirements of Subparagraph 5.4.1.1 if

5.4.1.2.1 The CAP Repayment Stipulation is not changed in such a way as to adversely affect CAWCD's ability to sell or use Excess CAP Water; and

5.4.1.2.2 CAWCD executes a contract to deliver Excess CAP Water to CAIDD and MSIDD, through the year 2030, at a cost not exceeding the CAP Pumping Energy Charge for delivery to CAP Contractors and CAP Subcontractors, and during such period CAP Pumping Energy Charges are not more than the amount determined by dividing the estimated CAP Pumping Energy Costs for the following Year by the total amount of CAP water that CAWCD estimates will actually be delivered through the CAP System in the following Year.

5.4.1.3 MSIDD shall:

5.4.1.3.1 Comply with the Groundwater pumping restrictions near the Reservation boundary as set forth in paragraph 5.C. of the MSIDD/BOR Agreement; and

5.4.1.3.2 Not construct or operate any new wells for Irrigation Use within the restriction zone identified in paragraph 5.C. of the

February 4, 2003
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MSIDD/BOR Agreement; provided, however, that MSIDD may make repairs or replacement of wells located within such restriction zone that are under MSIDD's control.

5.4.2 Hohokam Irrigation and Drainage District. Under the terms of the Hohokam Agreement, Hohokam reserved for the benefit of the Community fifteen percent (15%) of the water assigned to the cities of Chandler, Mesa, Phoenix and Scottsdale to be used in a final settlement between the Community and Hohokam and its landowners of all of the Community's water right claims against Hohokam and its landowners. Hohokam shall not exercise its rights under paragraph 7.2 of the Hohokam Agreement to request the reassignment of water for the benefit of the Community. Any water reassigned for M&I Use under paragraph 7.1 of the Hohokam Agreement shall remain CAP NIA Priority Water, notwithstanding anything in the Hohokam Agreement to the contrary. Any debt owed by Hohokam under section 9(d) of the Act of August 4, 1939 (commonly known as the Reclamation Project Act of 1939 (43 U.S.C. §485h)), shall be non-reimbursable to the United States except that portion of the debt that is the obligation of the cities of Chandler, Mesa, Phoenix and Scottsdale pursuant to the Hohokam Agreement.

February 4, 2003

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6.0 GLOBE EQUITY DECREE

6.1 The one hundred twenty-five thousand (125,000) AFY of Globe Equity Decree Water set forth in Subparagraph 4.1 neither guarantees, nor does it in any way limit, the decreed amount of water to which the Community, Allottees and the United States are entitled under articles V and VI of the Globe Equity Decree as that decree is written on the Effective Date.

6.2 The Community, Allottees and the United States shall not seek to increase the decreed amount of water to which they are entitled under articles V and VI of the Globe Equity Decree as that decree is written on the Effective Date; provided, however, that the Community, Allottees and the United States shall be able to seek enforcement of the Globe Equity Decree.

6.3 Subject to Subparagraph 29.22, the rights of the United States, the Community, Members, Allottees and SCIDD as set forth in the Globe Equity Decree shall be binding upon all parties to the Gila River Adjudication Proceedings, and such rights shall be included in the judgment filed in the Gila River Adjudication Proceedings approving this Agreement the form of which is attached as Exhibit 25.11A. Enforcement of the rights of the Community, Members, Allottees and SCIDD, and of the United States on behalf of each, shall be subject to Paragraph 26.0. This Subparagraph 6.3 is not intended to change the forum of enforcement of the Globe Equity Decree as among the parties to the Globe Equity Decree.

February 4, 2003

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7.0 HAGGARD DECREE/MARICOPA CONTRACT/SACATON CONTRACT

7.1 The rights of the United States, the Community, Members and Allottees as set forth in the Haggard Decree, as modified in the Benson-Allison Decree to 540 miners inches of water from the Salt River, shall be binding upon all parties to the Gila River Adjudication Proceedings, and such rights shall be included in the judgment in the Gila River Adjudication Proceedings approving this Agreement.

7.2 The Parties to this Agreement ratify, confirm and declare to be valid the Maricopa Contract, which provides that SRP shall make water available for an annual Diversion of five thousand nine hundred (5,900) acre-feet at the location of the SRP delivery point to the Community on the Maricopa Drain. The United States, the Community, Members and Allottees shall accept delivery of water under the Maricopa Contract in lieu of water to which they are entitled under the Haggard Decree, as modified in the Benson-Allison Decree, in full satisfaction of such rights.

7.3 The agreement between the United States of America and the Salt River Valley Water Users' Association dated June 3, 1907, as subsequently amended, commonly referred to as the Sacaton Contract, is terminated on the Enforceability Date and shall be of no further force or effect after that date.

February 4, 2003

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8.0 COMMUNITY CAP WATER DELIVERY CONTRACT AND DESIGN AND CONSTRUCTION OF FACILITIES

8.1 The cost to the United States to design and construct new facilities to deliver the Community's CAP Water shall be as shown in the Community's Master Repayment Contract, a copy of which is attached hereto as Exhibit 8.1. Pursuant to Section 212(e) of the Act, the Community's Master Repayment Contract shall provide that the construction costs allocable to the Community associated with that contract are non-reimbursable.

8.2 Pursuant to Sections 204 and 205 of the Act, the Community's CAP Water Delivery Contract shall conform to the provisions of Subparagraphs 8.3 through 8.11, 8.14 through 8.17, and 8.20 of this Agreement, a copy of which contract is attached hereto as Exhibit 8.2.

8.3 Pursuant to Section 204(b) of the Act, the Secretary shall deliver to the Community, upon the terms and conditions set forth in the Community's CAP Water Delivery Contract, the following described water, which is also referenced in Subparagraph 4.1:

8.3.1 173,100 AFY of CAP Indian Priority Water that was allocated to the Community in accordance with the Secretarial notice published in the Federal Register on March 24, 1983, and subsequently contracted to the Community for delivery by contract dated October 22, 1992.

8.3.2 102,000 AFY of CAP NIA Priority Water that was previously allocated to non-Indian agricultural entities and reallocated by the Secretary to the Community.

February 4, 2003
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8.3.3 The 18,600 AFY of RWCD CAP Water reallocated by the Secretary to the Community.

8.3.4 17,000 AFY of CAP M&I Priority Water allocated and contracted to Asarco if subsequently relinquished by that entity and reallocated by the Secretary to the Community.

8.3.5 18,100 AFY of HVID CAP Water reallocated by the Secretary to the Community.

8.4 Pursuant to Section 205(a)(1) of the Act, the Community's CAP Water Delivery Contract shall be for permanent service, as that term is used in Section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. §617d, and shall be without limit as to term.

8.5 Pursuant to Section 205(a)(2) of the Act, the Community may, with the approval of the Secretary, enter into contracts to lease, options to lease, contracts to exchange or options to exchange Community CAP Water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz or Coconino counties, Arizona, providing for the temporary delivery to others of any portion of the Community's CAP Water. Contracts to lease and options to lease shall be for a term not to exceed one hundred (100) years. Contracts to exchange or options to exchange shall be for the term provided for in each such contract or option. The Community may, with the approval of the Secretary, renegotiate any lease, including a Lease Agreement, at any time during the term of that lease or Lease Agreement provided the term of such renegotiated lease or Lease Agreement does not exceed one hundred (100) years. None of the Community's CAP Water may be permanently alienated.

February 4, 2003

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8.6 No Community CAP Water may be leased, exchanged, forborne, or otherwise transferred in any way by the Community for use directly or indirectly outside of the State of Arizona.

8.7 Pursuant to Section 205(a)(3) of the Act, the Community, and not the United States, shall be entitled to all moneys or other consideration due to the Community under any leases, options to lease, exchanges or options to exchange Community CAP Water entered into by the Community. The United States shall have no obligation to monitor, administer or account for, in any manner, any monies or other consideration received by the Community pursuant to contracts entered into by the Community to lease, option to lease, exchange or option to exchange Community CAP Water.

8.8 Pursuant to Section 205(a)(4) of the Act, all Community CAP Water shall be delivered through the CAP System; provided, however, that, in the event the delivery capacity of the CAP System is significantly reduced or anticipated to be significantly reduced for an extended period of time, or the CAP System is destroyed, the Community shall have the same CAP delivery rights as other CAP Contractors and CAP Subcontractors, if such CAP Contractors and CAP Subcontractors are allowed to take delivery of water under their CAP Contracts and CAP Subcontracts other than through the CAP System.

8.9 Pursuant to Section 205(a)(5) of the Act, the Community may use Community CAP Water on or off of the Reservation for Community purposes.

February 4, 2003
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8.10 The charges for delivery of Community CAP Water pursuant to the Community's CAP Water Delivery Contract shall be calculated in accordance with the CAP Repayment Stipulation.

8.11 Payment of CAP Water Delivery Charges.

8.11.1 Any lease or option to lease providing for the temporary delivery to others of any Community CAP Water shall require the lessee to pay the CAP Operating Agency all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges associated with delivery of the leased water. Neither the Community nor the United States shall be responsible for the payment of any charges associated with the delivery of Community CAP Water leased to others.

8.11.2 Pursuant to Section 205(a)(6) of the Act, the Secretary shall pay to the CAP Operating Agency the CAP Fixed OM&R Charges associated with the delivery of Community CAP Water, except as provided in Subparagraph 8.11.1.

8.11.3 The Community shall pay the CAP Operating Agency all CAP Pumping Energy Charges associated with the delivery of Community CAP Water, except for Community CAP Exchange Water and Community CAP Water leased to others. CAP Pumping Energy Charges associated with the delivery of Community CAP Exchange Water shall be paid as provided in Exhibit 18.1. CAP Pumping Energy Charges associated with the delivery of Community CAP Water leased to others shall be paid as provided in Subparagraph 8.11.1. Notwithstanding the first sentence of this Subparagraph 8.11.3, other persons or entities with whom the Community may exchange Community CAP Water may agree with the Community to pay to the CAP Operating Agency the

February 4, 2003

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CAP Pumping Energy Charges associated with the delivery of Community CAP Water pursuant to such exchange.

8.12 The CAP Operating Agency shall have no responsibility to deliver any Community CAP Water for which CAP Fixed OM&R Charges and CAP Pumping Energy Charges have not been paid in advance.

8.13 The Community shall schedule delivery of Community CAP Water in accordance with the Community's CAP Water Delivery Contract.

8.14 If the combined delivery requests for all CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors similarly located on the CAP System exceed the delivery capacity of the CAP System, then the CAP Operating Agency will consult with all affected CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors and shall coordinate any necessary schedule reductions until all schedules can be satisfied. Neither the Secretary nor the CAP Operating Agency may reduce the Community's delivery schedule for any month unless and until the requested monthly delivery schedules for all similarly located CAP Contractors, CAP Subcontractors and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules that the Community requested in that month, or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. Thereafter, if further reductions are needed because of limitations on the delivery capacity of the CAP System, the Community's requested monthly delivery schedule will not be reduced unless and until the requested monthly delivery schedules for all similarly located CAP Contractors,

February 4, 2003
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CAP Subcontractors and Excess CAP Water Contractors have been reduced to the same percentage of their annual CAP delivery schedules as the Community, or in the case of the Ak-Chin Indian Community by the maximum amount allowed by law. A CAP Contractor, CAP Subcontractor or Excess CAP Water Contractor shall be considered "similarly located" for purposes of this Subparagraph 8.14 if the CAP delivery schedule requested by that CAP Contractor, CAP Subcontractor or Excess CAP Water Contractor will affect the quantity of Community CAP Water available for delivery to the Community.

8.15 If Community CAP Water is to be delivered for use outside the boundaries of the Reservation, neither the Secretary nor the CAP Operating Agency shall be obligated to make such deliveries if, in the judgment of the CAP Operating Agency or of the Secretary, delivery or schedule of deliveries for such off-Reservation use would limit deliveries of CAP water to other CAP Contractors, CAP Subcontractors, or Excess CAP Water Contractors to a degree greater than would delivery of Community CAP Water to the Reservation; provided, however, that Excess CAP Water Contracts that are first entered into after the off-Reservation delivery of Community CAP Water has been established shall not limit such delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as "first entered into" if the Excess CAP Water Contractor did not hold an Excess CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior Year.

8.16 Shortage Sharing Criteria.

February 4, 2003

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8.16.1 On or before June 1 of each Year beginning in the Year following the Year in which the Enforceability Date occurs, the Secretary shall announce the Available CAP Supply for the following Year in a written notice to the CAP Operating Agency and to each CAP Contractor.

8.16.1.1 Prior to January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements set forth in Subparagraphs 8.16.1.1.1 through 8.16.1.1.3 below:

8.16.1.1.1 Three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water;

8.16.1.1.2 Six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water; and

8.16.1.1.3 Up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

8.16.1.2 On or after January 1, 2044, a time of shortage shall exist in any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the entitlements as set forth in Subparagraphs 8.16.1.2.1 through 8.16.1.2.4 below:

February 4, 2003
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- 8.16.1.2.1 Three hundred forty-three thousand seventy-nine (343,079) acre-feet of CAP Indian Priority Water;
- 8.16.1.2.2 Six hundred thirty-eight thousand eight hundred twenty-three (638,823) acre-feet of CAP M&I Priority Water;
- 8.16.1.2.3 Up to forty-seven thousand three hundred three (47,303) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water pursuant to the Hohokam Agreement; and
- 8.16.1.2.4 Up to one hundred eighteen (118) acre-feet of CAP M&I Priority Water converted from CAP NIA Priority Water under the San Tan Irrigation District's CAP Subcontract.

8.16.2 Initial Distribution of Water in Time of Shortage.

- 8.16.2.1 If the Available CAP Supply is equal to or less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then 36.37518% of the Available CAP Supply shall be available for delivery as CAP Indian Priority Water and the remainder shall be available for delivery as CAP M&I Priority Water.

February 4, 2003
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8.16.2.2

If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32,770 + (E - 853,079)] \times W\} + (343,079 - \{[32,770 + (E - 853,079)] \times E\})$$

where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in Subparagraphs 8.16.1.1 or 8.16.1.2, whichever is applicable; and

W = the Available CAP Supply

Examples:

A. If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in Subparagraph 8.16.1.1 is nine hundred eighty-one thousand nine hundred two (343,079 + 638,823) acre-feet,

February 4, 2003
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then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

B. If, after January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in Subparagraph 8.16.1.2 is one million twenty-nine thousand three hundred twenty-three (1,029,323) acre-feet $(343,079 + 638,823 + 47,303 + 118)$, then the quantity of water available for delivery as CAP Indian Priority Water would be one hundred fifty-one thousand six hundred ninety-one (151,691) acre-feet plus 18.59354% of the Available CAP Supply.

8.16.3 Redistribution of Unscheduled Water in Time of Shortage.

In time of shortage unscheduled CAP Water shall be distributed as follows:

8.16.3.1 Any water available for delivery as CAP Indian Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP Indian Priority Water shall become available for delivery as CAP M&I Priority Water.

8.16.3.2 CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the CAP Operating Agency in

February 4, 2003
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consultation with M&I water users to fulfill all delivery requests to the greatest extent possible. Any water available for delivery as CAP M&I Priority Water that is not scheduled for delivery pursuant to contracts, leases or exchange agreements for the delivery of CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

8.16.3.3 Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

8.16.3.4 Nothing in this Subparagraph 8.16 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such contractor's entitlement.

8.16.4 Distribution of CAP Indian Priority Water among CAP Indian Priority Water Users.

8.16.4.1 In consideration of the Community's agreement to incur additional shortages beyond those that it would have incurred under the approach described in Exhibit 8.16.4.1, the Secretary shall first make available to the Community any water made available for delivery as CAP Indian Priority Water under Subparagraph 8.16.3.2, to the extent necessary in any Year, to offset the additional shortages borne by the Community. After the

additional shortages borne by the Community have been fully offset, The Secretary shall then make any remaining water available in accordance with CAP Contracts and CAP Subcontractors for the delivery of CAP Indian Priority Water, including the Community's CAP Water Delivery contract, in proportion to their contractual entitlements to CAP Indian Priority Water.

8.16.4.2 If the Available CAP Supply is greater than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet but less than the sum of the entitlements described in Subparagraphs 8.16.1.1 or 8.16.1.2, as applicable, then the Community shall incur all shortages of CAP Indian Priority Water to the extent that sufficient quantities of CAP water, including all CAP M&I Priority Water available for delivery as CAP Indian Priority Water in accordance with Subparagraph 8.16.3.2, are not available to meet orders for CAP Indian Priority Water.

8.16.4.3 If the Available CAP Supply is greater than eight hundred one thousand five hundred seventy-four (801,574) acre-feet but less than eight hundred fifty-three thousand seventy-nine (853,079) acre-feet, up to fifty-one thousand five hundred five (51,505) acre-feet of the shortage of CAP Indian Priority Water shall be shared among the Community, the Ak-Chin Indian Community, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation and the San Carlos Apache Tribe. During a time

February 4, 2003
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of shortage described in this Subparagraph 8.16.4.3, the CAP Indian Priority Water available to the other four (4) tribes referenced above shall be determined in accordance with the provisions of their respective CAP water delivery contracts and any amendments thereto, which amendments shall be consistent with Subparagraph 8.16.4.

8.16.4.4

If the Available CAP Supply is less than eight hundred one thousand five hundred seventy-four (801,574) acre-feet, then the CAP Indian Priority Water determined to be available pursuant to Subparagraph 8.16.2.1 shall be distributed to the Community by the Secretary based on the ratio of the amount of water delivered pursuant to the Community's CAP Water Delivery Contract in the latest non-shortage Year relative to the total quantity of water delivered to all CAP Contractors for CAP Indian Priority Water in that same Year. However, if during the last non-shortage Year the Community had not completed construction of the distribution system necessary to take and use its CAP entitlement, the Secretary will impute in the calculation the quantity of CAP water that the Community would have been expected to take had the distribution system, as it exists at the time of the shortage, been in place during such non-shortage Year. For example, if the Secretary determines that: (1) in the last non-shortage Year the Community used only one hundred thirty thousand (130,000), acre-feet of its entitlement because the Community's CAP distribution system was only partially completed and would permit the delivery of only one

hundred thirty thousand (130,000) acre-feet of its entitlement; (2) as of the then current Year, additional construction of the Community's CAP distribution system has been completed; and (3) the Community can take and use, and has ordered for delivery, one hundred sixty-five thousand (165,000) acre-feet of CAP water, then the Secretary shall use an imputed quantity of one hundred sixty-five thousand (165,000) acre-feet for the Community when pro-rating the available water supply among the CAP Contractors for CAP Indian Priority Water.

8.16.4.5

If any Indian tribe or nation, other than the Community, enters into a new contract or amends the term or quantity of water in an existing contract for the delivery or exchange of CAP water, then the Secretary shall require such tribe or nation to include in such new contract or amendment, a provision to share, on a proportional basis⁸ with the Community, the additional shortage that the Community is bearing pursuant to Subparagraphs 8.16.4.2 and 8.16.4.3. In that event, the Community and the Secretary shall modify the Community's CAP Water Delivery Contract to reflect such sharing of shortages by the other tribes(s) or nations(s) and the Secretary shall divide any water made available to the Community pursuant to Subparagraph 8.16.4.1 among the Community and those contractors whose contracts have been so amended, in proportion to their respective entitlements to CAP Indian priority Water. Such amendments

February 4, 2003
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shall not require the Community to incur any greater shortage of CAP Indian priority Water than is required under the Community's CAP Water Delivery Contract. This Subparagraph 8.16.4.5 shall not apply to the renewal of any contract existing on the Effective Date with an Indian tribe or nation that the Secretary entered into pursuant to an Indian water settlement approved by an act of Congress.

8.17 Distribution of CAP NIA Priority Water. If the Available CAP Supply is insufficient to meet the CAP Contracts or CAP Subcontracts for the delivery of CAP NIA Priority Water, then the Secretary and the CAP Operating Agency shall pro-rate the CAP NIA Priority Water to the CAP Contractors and CAP Subcontractors holding such entitlements on the basis of the quantity of CAP NIA Priority Water used by each such CAP Contractor or CAP Subcontractor in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water. However, if during the last such Year the Community had not completed construction of the distribution system necessary to take and use its entire entitlement to CAP NIA Priority Water, the Secretary shall impute in the calculation the quantity of CAP NIA Priority Water that the Community would have been expected to take had the distribution system, as it exists in the then current Year, been in place during the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water. For example, if the Secretary determines that: (1) in the last Year in which the Available CAP Supply was sufficient to fill all orders for CAP NIA Priority Water, the Community used only ninety thousand (90,000) acre-feet of its entitlement to the delivery of CAP NIA Priority Water because the Community's CAP

⁸ The proportion shall be based on a ratio with the numerator being the amount of such tribe's entitlement to CAP Indian Priority

February 4, 2003
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distribution system was only partially completed and would permit the delivery of only ninety thousand (90,000) acre-feet, (2) as of the then current Year, additional construction of the Community's CAP distribution system has been completed, and (3) the Community can take and use, and has ordered for delivery, one hundred ten thousand (110,000) acre-feet of CAP NIA Priority Water, then the Secretary shall use an imputed quantity of one hundred ten thousand (110,000) acre-feet for the Community when pro-rating the CAP NIA Priority Water.

8.18 The CAP Operating Agency shall not unreasonably withhold permission or authorization to construct turnouts on the CAP System to deliver Community CAP Water that are necessary for the Community either to use its water on or off Reservation or to implement leases of or options to lease, exchanges or options to exchange Community CAP Water entered into by the Community. The costs of construction of turnouts necessary for the delivery of water to a lessee or to a recipient of water by exchange shall be borne by the lessee or recipient of water by exchange.

8.19 Pursuant to Section 204(d) of the Act, for purposes of determining the allocation and repayment of costs of any stages of the CAP hereafter constructed, the costs associated with the delivery of Community CAP Water, whether such water is delivered for use by the Community or is delivered pursuant to any leases of or options to lease, exchanges or options to exchange Community CAP Water entered into by the Community, shall be non-reimbursable, and such costs shall not be included in CAWCD's repayment obligation.

Water and the denominator being the sum of the amount of the Community's and such other tribe's CAP Indian Priority Water.

February 4, 2003

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8.20 Pursuant to Section 205(a)(7) of the Act, the costs associated with the construction of the CAP shall be non-reimbursable by the Community. No CAP water service capital charges shall be due or payable for Community CAP Water, whether such water is delivered for use by the Community or is delivered pursuant to any leases of or options to lease, exchanges or options to exchange Community CAP Water entered into by the Community.

8.21 The Community shall be entitled to enter into contracts for Excess CAP Water as provided in the CAP Repayment Stipulation. Subject to the provisions of Subparagraph 8.15, the Community may use such Excess CAP Water on or off the Reservation for Community purposes.

8.22 Nothing in this Agreement shall be construed as a limitation on the Community's ability to enter into any agreement with the Arizona Water Banking Authority, or its successor agency or entity, in accordance with State law.

8.23 In accordance with Section 105 of the Act, the State shall firm fifteen thousand (15,000) AFY of CAP NIA Priority Water for the benefit of the Community, to the equivalent of CAP M&I Priority Water for a period of one hundred (100) years after the Enforceability Date.

February 4, 2003

Execution copy

9.0 RWCD AGREEMENT

9.1 The Community and the United States shall not enforce, implement or exercise any rights under subsection 4.1.2 of the RWCD Agreement.

9.2 The Community and the United States shall have the right to enforce their rights under the RWCD Agreement only as to RWCD and its successors in interest.

February 4, 2003

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10.0 COMMUNITY/HELPS DODGE AGREEMENT

10.1 Phelps Dodge, the Community and the United States have entered into the Community/Phelps Dodge Agreement, an executed copy of which is attached as Exhibit 10.1. Subject to Subparagraph 29.3, except as provided in Subparagraphs 10.2.1.1 and 10.2.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 10.1, the terms of Exhibit 10.1 shall prevail as among the Parties to Exhibit 10.1. Notwithstanding anything in the Act or in this Agreement, should the Final Effective Date of the Community/Phelps Dodge Agreement (as that term is defined therein) not occur, then the provisions of this Paragraph 10.0 shall lapse and no longer be binding on any Party to this Agreement.

10.2 Confirmation of Certain Phelps Dodge Water Rights Claims.

10.2.1 Subject to the condition set forth in Subparagraph 10.2.1.1, SCIDD hereby waives and releases any objections to the validity or characteristics of Phelps Dodge's Water Rights claims as described in exhibit C-1 of the Community/Phelps Dodge Agreement.

10.2.1.1 Notwithstanding anything in the Community/Phelps Dodge Agreement, the Community, SCIDD and the United States on behalf of each reserve the right to challenge in any future proceedings any application for change of use, place of use or exchange with respect to any of the Water Rights

February 4, 2003
Execution copy

claims listed in exhibit C-1 of the Community/Phelps Dodge Agreement as to its potential adverse effect on the SCIP water supply.

10.2.2 Subject to Subparagraph 10.2.3, SCIDD hereby waives and releases any objections to the validity or characteristics of Phelps Dodge's Water Right claims as described in exhibit C-2 of the Community/Phelps Dodge Agreement.

10.2.3 Notwithstanding anything in the Community/Phelps Dodge Agreement, the Community, SCIDD and the United States on behalf of each reserve the right to challenge in any future proceedings any application for change of use, place of use or exchange (other than the relocation of the Upper Chase Creek Facility upstream to a location in Chase Creek in the NW¼, NW¼ of Section 28, Township 3 South, Range 29 East, G&SRB&M) with respect to any of the Water Rights listed in exhibit C-2 of the Community/Phelps Dodge Agreement as to its potential adverse affect on the SCIP water supply.

10.3 Phelps Dodge shall not convert those Water Rights described in exhibit C-2 of the Community/Phelps Dodge Agreement as being for Irrigation Uses to M&I Uses, at more than the consumptive use rate for the then-existing Irrigation Use.

10.4 Subject to the conditions set forth in Subparagraphs 10.4.1, 10.4.2, 10.4.3 and 10.4.4, and in subparagraph 10.0 of Exhibit 20.1 reflecting consideration to be provided to SCIDD by the Community following the Enforceability Date, SCIDD, the Community and the United States on behalf of each shall not assert a senior priority against, place a call upon or against, any use of

February 4, 2003

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water by Phelps Dodge from the sources described in exhibit D of the Community/Phelps Dodge Agreement, or object to the withdrawal of water from existing or future wells within the areas shown on exhibits E and F of the Community/Phelps Dodge Agreement.

10.4.1 The Community, the United States and SCIDD's agreement to not assert a senior priority against, or place a call upon or against, any use of water from existing or future wells in the Upper Eagle District (including replacement wells in the same location) shall not apply to the use of water from new wells completed in the conglomerate aquifer unless it is shown by Phelps Dodge that such use will not reduce the flow of the Gila River or its tributaries.

10.4.2 The Community's, the United States' and SCIDD's agreement not to assert a senior priority against or place a call upon or against any use of water from existing or future wells in the Morenci District shall not apply in any month that: (i) Phelps Dodge has Diverted all of the Surface Water allowed to be Diverted for the month, as described in paragraph (d)(1) of exhibit D of the Community/Phelps Dodge Agreement and in Subparagraph 10.4.3, and (ii) additional pumping from existing or new production well(s) causes a decline in water levels in the monitor wells associated with the production well(s) referred to in exhibit D-1 of the Community/Phelps Dodge Agreement to a level that is below the level of the bed of the San Francisco River.

10.4.3 Phelps Dodge agrees that its Diversions from Eagle Creek and the San Francisco River under that Decree styled as *In Re The Matter of the Determination of the Relative Rights To the Water of the Gila River and its Tributaries in Greenlee County, Arizona*, No. 1154-B, Superior Court, Greenlee County, November 28, 1927, Amended Decree, April 27,

February 4, 2003

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1936 ("the Ling Decree"), shall not exceed 3,000 acre-feet per annum from those sources,

with Diversions not to exceed the following amounts in the month indicated:

January	1,000 acre-feet
February	1,000 acre-feet
March	600 acre-feet
April	60 acre-feet
May	60 acre-feet
June	60 acre-feet
July	60 acre-feet
August	60 acre-feet
September	60 acre-feet
October	60 acre-feet
November	600 acre-feet
December	1,000 acre-feet

10.4.4 In the event that water is pumped from any production well(s) when the water level in the monitor well(s) associated with the production well(s) as shown on exhibit D-1 of the Community/Phelps Dodge Agreement, is below the level of the bed of the San Francisco River, as provided in Subparagraph 10.4.2(ii), the water withdrawn from such wells shall be charged against the right described in Subparagraph 10.4.3, above.

10.5 Phelps Dodge shall monitor and shall furnish to the Community and SCIDD a monthly report of the volumes of water pumped from the production well(s) referred to in Subparagraph 10.4.4 and shown on exhibit D-1 of the Community/Phelps Dodge Agreement, and the water level(s) in such well(s) and the monitor well(s) referred to in Subparagraph 10.4.4 and shown on exhibit D-1 of the Community/Phelps Dodge Agreement. Phelps Dodge shall install, maintain and operate such measuring devices and facilities as may be reasonably necessary to provide such reports. The Community and SCIDD shall have the right at all reasonable times, in compliance with applicable federal laws and Phelps Dodge safety protocols,

February 4, 2003

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to inspect records of pumping, measuring devices and the well(s). An example of the report to be provided by Phelps Dodge to the Community and SCIDD is provided as exhibit D2 of the Community/Phelps Dodge Agreement.

10.6 Phelps Dodge hereby waives and releases any objections to the validity or characteristics of the Water Rights of SCIDD, and the Community and of the United States on behalf of each, as set forth in the Globe Equity Decree as of the Enforceability Date. Such waiver and release includes a waiver of any objection to SCIDD's claim of the right to share in all of the Water Rights held by the United States on behalf of the Indian lands within SCIP, including, but not limited to, the right to share in the immemorial water right set forth in article VI of the Globe Equity Decree.

February 4, 2003

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11.0 ASARCO CAP WATER.

The Community represents that it will continue to meet and engage in good faith negotiations in an effort to reach an agreement whereby Asarco shall relinquish the Asarco CAP Water in favor of the Community, such relinquishment to be in consideration of the Community's waiver of certain of its rights, claims and objections.

February 4, 2003

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12.0 SRP STORED WATER

12.1 Except as provided in Subparagraph 12.2, SRP shall credit the Community annually with an entitlement to SRP Stored Water ranging from two thousand (2,000) to thirty-five thousand (35,000) acre-feet at Net SRP Reservoir Storage levels on May 1 of each year that exceed one hundred thousand (100,000) acre-feet in accordance with Exhibit 12.1. At Net SRP Reservoir Storage levels on May 1 of less than or equal to one hundred thousand (100,000) acre-feet, no SRP Stored Water shall be credited to the Community for that year. A year under Paragraph 12.0 shall be from May 1 through the following April 30.

12.2 The Community's entitlement to SRP Stored Water under Subparagraph 12.1 shall phase in over five (5) years as provided in this Subparagraph 12.2. The Community shall be entitled to twenty percent (20%) of the SRP Stored Water entitlement under Subparagraph 12.1 in the year in which the Enforceability Date occurs, and the percentage shall increase by twenty percent (20%) each year thereafter over the subsequent four (4) years on a straight-line basis, rising to one hundred percent (100%) of the Community's entitlement under Subparagraph 12.1.

12.3 Current and Carryover Accounts.

12.3.1 SRP shall establish and maintain two separate water accounts for the SRP Stored Water entitlement of the Community under Paragraph 12.0: (1) the Current Account and (2) the Carryover Account. The Current Account shall be credited at 12:01 a.m. on May 1 of each year

February 4, 2003
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with the Community's annual entitlement of SRP Stored Water under Subparagraph 12.1. Any and all credits remaining in the Current Account at 11:59 p.m. on the following April 30 shall be transferred to the Community's Carryover Account; provided, however, that the total of the credits in the SRP Exchange Water Account under Paragraph 13.0, and the credits in the Carryover Account shall not exceed forty-five thousand (45,000) acre-feet at any time. Any credits in excess of forty-five thousand (45,000) acre-feet shall revert to SRP. All storage credits in the Current Account and Carryover Account shall be held in the Salt River Reservoir System.

12.3.2 The credits in the Current Account shall not be subject to transportation losses, evaporation losses, or spills. The credits in the Carryover Account shall not be subject to transportation losses but shall be subject to evaporation and spill losses as provided in this Subparagraph 12.3.2. Evaporation losses shall be deducted from the credits in the Carryover Account monthly by SRP at the rate of one-half of one percent (0.5%) of the credit balance in the Carryover Account at the end of each month. Unless otherwise agreed to in writing by SRP, the credits in the Carryover Account shall be subject to spill at such time and to the extent that the SRP Reservoir Space is full and the amount of water in the Salt River Reservoir System is increasing. The SRP Reservoir Space shall be deemed full for purposes of this Subparagraph 12.3.2 when the sum of the water stored in the SRP Reservoir Space and the water storage credits for those entities listed in Subparagraph 2.122 is equal to the capacity of the SRP Reservoir Space. Credits in the Carryover Account shall not be subject to spill until after all credits in the SRP Exchange Water Account have spilled. The credits in the Carryover Account shall be reduced by one acre-foot for each acre-foot that is spilled under this Subparagraph 12.3.2 until the credit balance is reduced to zero. The Carryover Account credits shall spill prior to any other

February 4, 2003

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storage credits in the Salt River Reservoir System that are a result of agreements in effect as of the Effective Date among SRP and other entities. The Carryover Account credits shall spill after any other storage credits in the Salt River Reservoir System that are a result of any agreement entered into on or after the Effective Date between SRP and another entity, including any amendment of an agreement in effect as of the Effective Date that, as a result of such amendment, increases the storage entitlement of the entity above its entitlement existing as of the Effective Date. In the event that an agreement in effect as of the Effective Date is amended to increase the other entity's storage entitlement, only that increase in the storage entitlement shall spill before the credits in the Community's Carryover Account. SRP shall notify the Community of an impending spill as soon as practicable. SRP shall provide to the Community monthly reports showing Carryover Account credits, deliveries to the Community, and losses through evaporation and spills. SRP also shall provide to the Community monthly reports showing Current Account credits and deliveries to the Community.

12.4 SRP Stored Water Orders.

12.4.1 Subject to the phase-in percentages set forth in Subparagraph 12.2, the Community shall not be entitled to order more than forty-five thousand (45,000) AFY from the total credits in the Current Account and the Carryover Account. The credits in the Current Account and in the Carryover Account shall be reduced by one acre-foot for each acre-foot of SRP Stored Water delivered to the Community as provided in Subparagraph 12.4 or Diverted by the Community as provided in Subparagraph 12.5. All Community orders of SRP Stored Water and water Diverted by the Community as provided in Subparagraph 12.5 first shall be deducted from the credits in

February 4, 2003
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the Current Account until that account is exhausted. Once credits in the Current Account are exhausted, orders of SRP Stored Water and water Diverted by the Community as provided in Subparagraph 12.5 then shall be deducted from the credits in the Carryover Account.

12.4.2 The Community shall, prior to scheduling any water for delivery under Paragraphs 12.0 or 13.0, notify SRP of the identity of the person or persons authorized to submit water orders to SRP for the Community. SRP shall not be required to honor any water order that is not submitted by an authorized person identified by the Community. SRP shall notify the Community of the identity of the person or persons authorized to receive water orders from the Community.

12.4.3 Unless otherwise agreed to in writing by SRP, the Community shall provide all orders and any changes to orders of SRP Stored Water in writing to SRP at least seventy-two (72) hours in advance of the requested time of delivery. All Community orders of SRP Stored Water shall be subject to the restrictions set forth in Subparagraphs 12.3 and 12.4.

12.4.4 The daily SRP Stored Water order shall be subject to the limits of the water delivery system capacity provided to the Community under Paragraph 15.0 and to the provisions of Subparagraph 12.10.

12.4.5 Unless otherwise agreed to in writing by SRP, the Community shall only order SRP Stored Water for delivery to the Community at the following delivery points: (1) at Gate 4-14.4 on the Eastern Canal, (2) at the Reservation boundary on the Consolidated Canal, (3) at the

February 4, 2003

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Reservation boundary on the Gila Drain and (4) at the site of the existing gauge on Dead Horse Ditch. Except as provided in Subparagraph 12.5, the Community's order of SRP Stored Water shall be satisfied when the quantity of water ordered is available for Diversion by the Community at the requested delivery point and such quantity shall be deducted from the amount of SRP Stored Water to which the Community is entitled pursuant to Paragraph 12.0. The Community shall accept delivery and Divert all SRP Stored Water delivered to it by SRP at the requested delivery point.

12.4.6 All Community orders of water for delivery at Gate 4-14.4 on the Eastern Canal shall be made through RWCD. The Community shall request that RWCD place a single order of water for delivery at this gate with SRP and identify as part of the order the portion of the order that is RWCD water and the portion of the order that is Community water.

12.4.7 At the sole expense of the Community, SRP shall design, construct, install and maintain a measuring device at each point where water is delivered to the Community by SRP. SRP shall maintain the accuracy of such measurement device commensurate with the accuracy of measuring devices used by SRP for similar purposes. The measuring device shall include telemetry equipment that shall have the ability to provide real-time data transmission to SRP, the Community and the United States.

12.4.8 The Community shall not be entitled to delivery of any water from SRP: (1) when there are not sufficient credits in one of the Community's SRP accounts, (2) when payment for the water has not been received by SRP, (3) when delivery is precluded at a delivery point during dry

February 4, 2003
Execution copy

up of the SRP water delivery system or (4) at any time when emergencies, maintenance or repairs of the SRP water delivery system preclude water deliveries to the Community.

12.4.9 SRP shall notify the Community of annual dry-ups on the same basis as SRP shareholders, and in any event at least thirty (30) days in advance of each dry up of the water delivery system. SRP shall notify the Community as soon as practicable of any emergencies, maintenance or repairs that may interrupt deliveries to the Community. Such interruptions or curtailments of the Community's ability to take delivery of water from SRP shall be at SRP's discretion. The Community shall indemnify and hold SRP harmless against any liability for damages occurring on the Reservation by reason of such interruptions or curtailments if such interruptions or curtailments are not caused by SRP's negligence.

12.5 Water Diverted from Drains.

12.5.1 Any and all water Diverted on the Reservation from the Gila Drain and Dead Horse Ditch during a time that the Community has placed an order for delivery of SRP Stored Water pursuant to Subparagraph 12.4 shall be deducted from, and shall be in satisfaction of, in whole or in part, the amount of SRP Stored Water that the Community is entitled to pursuant to Paragraph 12.0. All water Diverted by or on behalf of the Community, Members or Allottees from the Maricopa Drain, in excess of the five thousand nine hundred (5,900) AFY delivered pursuant to Exhibit 7.2, during a time that the Community has placed an order for delivery of SRP Stored Water pursuant to Subparagraph 12.4, shall be deducted from, and shall be in satisfaction of, in whole or in part, the amount of SRP Stored Water that the Community is entitled to pursuant to

February 4, 2003

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Paragraph 12.0. For purposes of Paragraph 12.0, "Diverts," "Diverted," or "Diversions" shall include the impoundment of drain water from the Dead Horse Ditch, Gila Drain, and Maricopa Drain. "Diverts," "Diverted," or "Diversions" shall not include the rerouting of water from the Dead Horse Ditch, Gila Drain, or Maricopa Drain to a realigned drain, ditch or other structure that serves the same purpose as did such drain, ditch or other structure prior to the realignment.

12.5.2 Notwithstanding Subparagraph 12.5.1, Diversions of water on the Reservation from the Gila Drain and the Dead Horse Ditch other than water ordered pursuant to Subparagraph 12.4, and from the Maricopa Drain, shall not reduce the amount of SRP Stored Water to which the Community is entitled pursuant to Paragraph 12.0 in any year in which the Community's entitlement to SRP Stored Water under Subparagraph 12.1 is less than or equal to four thousand (4,000) acre-feet.

12.5.3 In addition to the measuring devices referred to in Subparagraph 12.4.7, the Community shall: (1) install and maintain devices capable of measuring and recording all Diversions of water by or on behalf of the Community, Members and Allottees under Subparagraph 12.5, and (2) implement procedures to record and collect data concerning all Diversions of water by or on behalf of the Community, Members and Allottees under Subparagraph 12.5. The accuracy of these measuring and recording devices shall be commensurate with measuring and recording devices and procedures used by SRP for similar purposes but the accuracy required shall not be more stringent than industry standards. At least annually for three (3) years after the installation of the devices required pursuant to this Subparagraph 12.5.3, the Community shall retain a registered professional engineer to inspect, and, if necessary, correct the accuracy of the

February 4, 2003

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measuring and recording devices and procedures used by the Community under this Subparagraph 12.5.3. After the third anniversary of the installation of the devices, inspections shall occur at least every three (3) years. Within thirty (30) days of the inspections, the Community shall file in the Gila River Adjudication Proceedings a certified copy of the report by the registered professional engineer that sets forth the findings of the inspection and a verification that the measuring and recording devices and procedures satisfy industry standards. At any time, SRP may require, upon seven (7) days notice, an inspection by a registered professional engineer of the measuring devices required by this Subparagraph 12.5.3. If the results of the inspection show that the devices' measurement accuracy is within industry standards, then SRP shall pay all costs incurred for the inspection. Otherwise, the Community shall bear such costs.

12.5.4 The Community shall install and maintain, at its own expense, water flow sensing and telemetry equipment on any or all water flow measuring devices at such locations where the Community, Members or Allottees Divert or intend to Divert water from the drains or extensions thereof. The Community shall provide SRP with weekly reports listing daily amounts of all Diversions made at such locations.

12.5.5 In addition to the reports required by Subparagraph 12.5.4, the Community shall provide monthly reports to SRP listing daily amounts of Diversions under Subparagraph 12.5 from those locations not equipped with water flow sensing and telemetry equipment.

February 4, 2003

Execution copy

12.6 Except as provided in Subparagraph 12.5 and except for up to five thousand nine hundred (5,900) AFY of water delivered pursuant to Exhibit 7.2, drainage water that is Diverted from SRP drains on the Reservation shall not be deducted from the amount of SRP Stored Water to which the Community is entitled pursuant to Paragraph 12.0, nor shall such drainage water count against the Settlement Water Budget.

12.7 Except as otherwise provided in this Subparagraph 12.7 and Exhibit 7.2, SRP Stored Water shall be delivered to the Community at one hundred percent (100%) of the cost per acre-foot of Stored Water for SRP shareholders, as determined on an annual basis by the Board of Governors of the Salt River Valley Water Users' Association (ten dollars (\$10.00) per acre-foot for 2002). SRP shall notify the Community of the per acre-foot charge for Stored Water for the upcoming year by December 1 of each year. SRP shall bill the Community by June 1 of each year for Stored Water credited to the Community on May 1 of that year. The billed amount shall be reduced by the product of the price per acre foot charged to the Community the prior year for SRP Stored Water multiplied by the number of acre-feet, if any, of non-SRP Stored Water Diverted in the prior year from the Dead Horse Ditch or the Gila Drain during a time in which the Community had placed an order for delivery of SRP Stored Water and that was deducted in that year from the amount of SRP Stored Water to which the Community was entitled under Subparagraph 12.1. The Community shall pay this amount to SRP by July 1 of each year. If an SRP Stored Water order is filled in part by water from the Dead Horse Ditch or the Gila Drain, the Community shall be charged only for that amount, if any, of SRP Stored Water delivered into these two facilities specifically to meet the water order. The Community shall not be charged for the Diversion of non-SRP Stored Water from the Dead Horse Ditch, the Gila Drain, or the

February 4, 2003

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Maricopa Drain except as provided in Exhibit 7.2 for quantities of water greater than five thousand nine hundred (5,900) AFY.

12.8 SRP Stored Water may be used only on the Reservation for any lawful and beneficial purpose as defined by the Water Code. SRP Stored Water credited to the Community under Paragraph 12.0 shall not be assignable or transferable by the United States, the Community, or Members, without the prior written consent of SRP and any such attempted assignment or transfer without such consent shall be void; provided, however, the Community shall be treated the same as SRP shareholders with respect to any requested assignments or transfers.

12.9 Solely for the purpose of establishing the Settlement Water Budget, the Community's entitlement to SRP Stored Water under Subparagraph 12.1 is estimated to average twenty thousand (20,000) AFY. This estimated amount neither guarantees that the Community shall receive this amount of SRP Stored Water nor restricts the right and ability of the Community to receive more SRP Stored Water in accordance with the provisions of Paragraph 12.0.

12.10 Water Quality.

12.10.1 SRP neither guarantees nor warrants to the United States, the Community, Members and Allottees the quality of water reaching the Reservation boundary through the SRP water delivery and drainage system. SRP shall not be required to purify or otherwise treat the water delivered by SRP at the Community's delivery points or through SRP drains to meet applicable water quality standards established by Federal, State, Community, or local authorities.

12.10.2 The Community shall indemnify and hold SRP harmless for losses caused to the Community, Members and Allottees resulting from water quality degradation caused by the delivery of water to the Community or the United States by SRP after the Enforceability Date, and the Community shall defend SRP against all claims for such losses; provided, however, that nothing in this Subparagraph 12.10.2 shall limit the Community's or the United States' ability to assert claims for Injuries to Water Quality as provided in Subparagraph 25.6.

12.10.3 SRP shall cooperate with appropriate State and Federal regulatory agencies in their enforcement of regulations related to water quality against persons or entities whose actions have resulted in degradation of SRP water supplies. SRP shall also use its best efforts to restrict point source discharges to the SRP water delivery and drainage system to entities possessing such discharge permits as may be required by State or Federal law. The pendency of an application for such a permit shall be regarded as the possession of such a permit for the purposes of this Subparagraph 12.10.3.

12.11 Notwithstanding the use of the term "SRP Stored Water" in Paragraph 12.0, the Community and the United States acknowledge that the water delivered by SRP to the Community pursuant to Paragraph 12.0 shall not be limited to Surface Water from the Salt River, but may include water from other sources including, but not limited to, Underground Water, agricultural return flows, drainage water, Colorado River water, and Effluent.

February 4, 2003
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12.12 SRP agrees that it shall: (1) consult with the Community and the United States with respect to proposed changes to SRP's reservoir operating criteria that could affect the Community's entitlement to SRP Stored Water under Subparagraph 12.1 and with respect to SRP's annual dry-up and scheduled maintenance of its water delivery system to the extent those activities may affect water deliveries to the Community, and (2) cooperate with the Community and the United States and use its best efforts to avoid adverse impacts to the Community from such changes, dry-up and maintenance to the extent reasonably possible and otherwise treat the Community, Members and Allottees in a manner similar to SRP shareholders. Notwithstanding the foregoing, SRP shall retain sole responsibility and authority for decisions relating to the care, operation and maintenance of the SRP water delivery system, including the SRP Reservoirs.

12.13 Conditional Blue Ridge Stored Water Entitlement

12.13.1 In the event SRP agrees, in its sole and absolute discretion, to accept an offer by Phelps Dodge to transfer to SRP all of Phelps Dodge's right, title and interest in Blue Ridge dam and all of its related facilities, including all rights to water developed thereby, but excluding such real property and subject to the fulfillment of certain provisions, and in the further event all of such developed water rights are validly transferred from Phelps Dodge to SRP by the State of Arizona, then SRP shall credit the Community with an annual entitlement to Blue Ridge Stored Water ranging from zero (0) acre-feet to eight hundred thirty-six (836) acre-feet in accordance with Exhibit 12.13. The Community's conditional entitlement to Blue Ridge Stored Water under this Subparagraph shall be in addition to the Community's entitlement to SRP Stored Water under Subparagraphs 12.1 through 12.9.

12.13.2 SRP shall establish and maintain a separate water account for the Blue Ridge Stored Water entitlement of the Community under Subparagraph 12.13 entitled: The Blue Ridge Account. The Blue Ridge Account shall be credited at 12:01 a.m. on May 1 of each year with the Community's annual entitlement to Blue Ridge Stored Water under Subparagraph 12.13. The Community shall not be entitled to carry over any unused credits in the Blue Ridge Account from year-to-year. All credits remaining in the Blue Ridge Account at 11:59 p.m. on the following April 30 shall be transferred to SRP and the Blue Ridge Account balance, if any, reduced to zero.

12.13.3 The credits in the Blue Ridge Account shall not be subject to transportation losses, evaporation losses or spills. The credits in the Blue Ridge Account shall be reduced by one acre-foot for each acre-foot of water from the Blue Ridge Account delivered to the Community in accordance with Subparagraphs 12.4.2 through 12.4.9.

12.13.4 Blue Ridge Stored Water shall be delivered to the Community upon the Community's payment to SRP of ten percent (10%) of SRP's fixed operation, maintenance and repair costs for Blue Ridge dam and all of its related facilities, as those costs are defined on Exhibit 12.13.4. SRP shall bill the Community by June 1 of each year for Blue Ridge Stored water credited to the Community on May 1 of that year. The Community shall pay this amount to SRP by July 1 of each year. In addition, the Community shall pay SRP on a monthly basis the per acre foot variable costs incurred by SRP in delivering water from Blue Ridge reservoir to the point Blue Ridge water is discharged into the East Verde River, as those costs are defined on Exhibit 12.13.4, for each acre-foot delivered to the Community by SRP from the Blue Ridge

February 4, 2003

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Account. SRP shall bill the Community by the 8th day of each month for the prior month's per acre foot variable cost to deliver water from Blue Ridge reservoir and the Community shall pay this amount by the 10th day of the following month.

12.13.5 Water from the Blue Ridge Account may be used only on the Reservation for any lawful and beneficial purpose as defined by the Water Code. Water from the Blue Ridge Account credited to the Community under paragraph 12.13 shall not be assignable or transferable by the United States, the Community, or Members, without prior written consent of SRP and any such attempted assignment or transfer without such consent shall be void; provided, however, the Community shall be treated the same as SRP shareholders with respect to any requested assignments or transfers.

12.13.6 Solely for the purpose of establishing the Settlement Water Budget, the Community's entitlement to Blue Ridge Stored Water under Subparagraph 12.13.1 is estimated to average five hundred (500) AFY. This estimated amount neither guarantees that the Community shall receive this amount of Blue Ridge Stored Water nor restricts the right and ability of the Community to receive more Blue Ridge Stored Water in accordance with the provisions of Subparagraph 12.13.1.

12.13.7 Notwithstanding the use of the term "Blue Ridge Stored Water" in Subparagraph 12.13, the Community and the United States acknowledge that the water delivered by SRP to the Community pursuant to Paragraph 12.13 shall not be limited to Surface Water from the Verde

February 4, 2003

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13.0 COMMUNITY/SRP CAP WATER EXCHANGE

13.1 SRP shall accept delivery of Community/SRP Exchange Water from the Community in exchange for SRP water stored in the Salt River Reservoir System pursuant to Paragraph 13.0 unless SRP cannot receive or beneficially use the Community/SRP Exchange Water. Unless otherwise agreed to in writing by SRP and the Community, all deliveries of Community/SRP Exchange Water to SRP under Paragraph 13.0 shall be made through the CSIF.

13.1.1 For Community/SRP Exchange Water delivered to SRP under Paragraph 13.0, the Community shall pay all CAP Pumping Energy Charges and all other contractually required CAP charges associated with such water. SRP shall not bear any costs associated with the delivery of the Community/SRP Exchange Water to the CSIF or for any Community/SRP Exchange Water delivered to the CSIF that SRP cannot receive or beneficially use.

13.1.2 If SRP cannot receive or cannot beneficially use the Community/SRP Exchange Water, SRP shall notify the Community and the CAP Operating Agency as soon as practicable and in any event before it is Diverted into the CSIF in order that the Community can request delivery of its Community CAP Water to an alternate delivery point.

13.1.3 The Community shall receive SRP Exchange Water Credits when Community/SRP Exchange Water is Diverted at the CSIF. If SRP fails to Divert the Community/SRP Exchange Water at the CSIF and fails to notify the Community of that fact prior to the time that the water reaches the CSIF, the Community shall be entitled to SRP Exchange Water Credits for the

February 4, 2003

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amount of water SRP failed to Divert unless the Community, the CAP Operating Agency or SRP secures the delivery of such water to another user without charge against the Community's CAP Water. In this latter event, the Community shall not be entitled to SRP Exchange Water Credits for the Community CAP Water delivered to the other user.

13.2 SRP shall establish and maintain the SRP Exchange Water Account for the benefit of the Community under Paragraph 13.0. One acre-foot of exchange water credit shall be added by SRP to the SRP Exchange Water Account for each acre-foot of the Community/SRP Exchange Water actually Diverted at the CSIF. Unless otherwise agreed to in writing by SRP, no more than three thousand (3,000) acre-feet of SRP Exchange Water Credits may be developed by the Community in a single month and no more than fifteen thousand (15,000) acre-feet of SRP Exchange Water Credits may be developed by the Community in a single Year. Any excess SRP Exchange Water Credits above the monthly and annual limits set forth in this Subparagraph 13.2 shall accrue to SRP. SRP Exchange Water Credits may be carried over in the SRP Exchange Water Account from prior Years; provided, however, that the total amount of Community credits in the SRP Exchange Water Account and in the Carryover Account under Subparagraph 12.3 shall not exceed forty-five thousand (45,000) acre-feet at any time.

13.3 Evaporation losses shall be deducted from the credits in the SRP Exchange Water Account monthly by SRP at the rate of one-half of one percent (0.5%) of the credit balance in the SRP Exchange Water Account at the end of each month. The credits in the SRP Exchange Water Account shall be subject to spill at such time and to the extent that the SRP Reservoir Space is full and the amount of water in the Salt River Reservoir System is increasing. The SRP

February 4, 2003
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Reservoir Space shall be deemed full for purposes of this Subparagraph 13.3 when the sum of the water stored in the SRP Reservoir Space and the water storage credits for those entities listed in Subparagraph 2.122 is equal to the capacity of the SRP Reservoir Space. Credits in the Carryover Account shall not be subject to spill until after all credits in the SRP Exchange Water Account have spilled. The SRP Exchange Water Credits shall be reduced by one acre-foot for each acre-foot that is spilled under this Subparagraph 13.3 until the credit balance is reduced to zero. The SRP Exchange Water Credits shall spill prior to any other storage credits in the Salt River Reservoir System that are a result of agreements in effect as of the Effective Date among SRP and other entities. The SRP Exchange Water Credits shall spill after any other storage credits in the Salt River Reservoir System that are a result of any agreement entered into on or after the Effective Date between SRP and another entity, including any amendments of agreements in effect as of the Effective Date that, as a result of such amendment, increases the storage entitlement of the entity above its entitlement existing as of the Effective Date. In the event that an agreement in effect as of the Effective Date is amended to increase the other entity's storage entitlement, only that increase in the storage entitlement shall spill before the SRP Exchange Water Credits. SRP shall notify the Community of an impending spill as soon as practicable. SRP shall provide to the Community monthly reports of exchange water credits developed, deliveries of exchange water to the Community, transportation losses, and SRP Exchange Water Credit losses through evaporation and spills.

13.4 Community/SRP Exchange Water Scheduling.

February 4, 2003

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13.4.1 The Community shall provide to SRP on or before September 1 of each Year a proposed schedule of the amount of Community/SRP Exchange Water anticipated to be delivered monthly to SRP by the Community during the upcoming Year. The schedule shall include a listing of the amount of Community/SRP Exchange Water proposed to be delivered to SRP on a monthly basis which, unless otherwise agreed to in writing by SRP, shall not exceed three thousand (3,000) acre-feet per month or fifteen thousand (15,000) AFY.

13.4.2 SRP shall review the Community's proposed schedule and, in consultation with the Community, revise the proposed schedule as may be necessary to permit SRP to satisfy its delivery obligations to its shareholders and to entities with whom SRP has delivery agreements dated prior to the Effective Date. Notwithstanding the preceding sentence, SRP shall work cooperatively and use its best efforts with the Community to agree to a mutually satisfactory delivery schedule.

13.4.3 SRP shall provide to the CAP Operating Agency by October 1 of each Year, SRP's schedule of projected deliveries of Community/SRP Exchange Water to SRP for the upcoming Year.

13.4.4 On or before December 1 of each Year, the CAP Operating Agency shall provide to SRP and to the Community the CAP Operating Agency Annual Schedule for Community/SRP Exchange Water to be delivered to SRP.

February 4, 2003
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13.4.5 The CAP Operating Agency, SRP or the Community may modify the CAP Operating Agency Annual Schedule as necessary. Any request to modify the CAP Operating Agency Annual Schedule shall include a notice to the CAP Operating Agency, SRP and the Community of the requested modification. The CAP Operating Agency shall respond to the request for modification of the CAP Operating Agency Annual Schedule as provided in the Community's CAP Water Delivery Contract, and provide a copy to SRP and the Community.

13.4.6 SRP shall have the right to order the Community/SRP Exchange Water scheduled pursuant to article 4.6 of the Community's CAP Water Delivery Contract for delivery to SRP directly from the CAP Operating Agency. SRP shall develop a daily delivery schedule of Community/SRP Exchange Water orders and, as soon as practical, notify the CAP Operating Agency and the Community of any changes to the daily delivery schedule in accordance with the CAP Operating Agency's standard ordering procedures.

13.5 Exchange Water Orders.

13.5.1 The Community shall notify SRP by December 1 of each Year of the estimated amount of water from the SRP Exchange Water Account that it intends to order for delivery during the upcoming Year.

13.5.2 SRP shall fill the water order of the Community for delivery of exchange water through the SRP water delivery system to the extent that SRP Exchange Water Credits exist in the SRP Exchange Water Account. SRP Exchange Water Credits shall be reduced by SRP on the basis of

February 4, 2003

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one acre-foot for each acre-foot of water delivered to the Community as provided in Subparagraph 12.4.5, plus losses for transportation of exchange water from Granite Reef Dam to the delivery points specified in Subparagraph 12.4.5. Transportation losses shall be calculated based on SRP's water balance of supply and delivery using a procedure similar to the loss calculation used in standard reporting to the ADWR and the United States Bureau of Reclamation. SRP shall review and adjust such transportation loss rate annually in April based on annual average SRP water delivery system losses during the preceding five (5) Years. Such adjusted rate shall remain in effect until the next adjusted rate. SRP shall notify the Community by April 1 of each Year of the transmission losses for the upcoming period of April 1 of that Year through March 31 of the following Year. All water orders and deliveries of exchange water to the Community shall be subject to the terms and conditions provided in Subparagraphs 13.5.3 through 13.5.5.

13.5.3 Unless otherwise agreed to in writing by SRP, the Community shall make all orders and any changes to orders of water from the SRP Exchange Water Account in writing to SRP at least seventy-two (72) hours in advance of the requested time of delivery. All Community orders of exchange water shall be subject to the restrictions set forth in Subparagraphs 12.4.2, 12.4.5, 12.4.6 and 12.4.8.

13.5.4 The delivery of the Community's water from the SRP Exchange Water Account shall be subject to the limits of the SRP water delivery system capacity provided to the Community under Paragraph 15.0 and to the provisions of Subparagraph 12.10.

February 4, 2003

Execution copy

13.5.5 The Community shall pay SRP the same amount for each acre-foot of Community/SRP Exchange Water delivered to SRP through the CSIF pursuant to Paragraph 13.0 as the Salt River Valley municipalities pay for use of SRP's capacity in the CSIF (nine dollars and fifty-nine cents (\$9.59) per acre-foot for 2002). In addition, the Community shall pay SRP the same transportation charge per acre-foot for each acre-foot of water delivered by SRP to the Community as the Salt River Valley municipalities pay (ten dollars and seventy-nine cents (\$10.79) per acre-foot for 2002). SRP shall notify the Community of the CSIF and transportation charges for the upcoming Year by December 1 of each Year. SRP shall bill the Community for the CSIF and transportation charges by February 1 of each Year for that Year. The CSIF charges shall be based on the total amount of Community/SRP Exchange Water listed in the CAP Operating Agency Annual Schedule. The transportation charges shall be based on the amount of estimated deliveries of Community/SRP Exchange Water notified to SRP pursuant to Subparagraph 13.5.1. The Community shall pay this amount by March 1 of that Year. The billed amount shall be adjusted to reflect the actual amount of Community/SRP Exchange Water received and used by SRP during the previous Year and the actual amount of Community/SRP exchange water transported and delivered to the Community by SRP during the previous Year.

13.6 The Community shall pay an administrative fee to SRP in any Year in which an exchange is in effect to cover administrative costs associated with the exchange. The amount of the administrative fee in 2002 was four thousand eighty six dollars (\$4,086). SRP shall bill the Community for the administrative fee by February 1 of each Year for the current Year and the Community shall pay the administrative fee by March 1 of each Year. This charge shall be adjusted annually by multiplying the current fee by the Annual Index.

February 4, 2003
Execution copy

13.7 SRP Exchange Water Credits shall not be assignable or transferable by the United States, the Community or Members without the prior written consent of SRP. Any attempted assignment or transfer of such credits without SRP's prior written consent shall be void; provided, however, that the Community shall be treated the same as SRP shareholders with respect to any requested assignments or transfers.

February 4, 2003

Execution copy

14.0 SRP-COMMUNITY DIRECT CAP WATER DELIVERY

14.1 SRP shall accept delivery of Community CAP Water for direct delivery to the Community pursuant to Paragraph 14.0. Unless otherwise agreed to in writing by SRP and the Community, all deliveries of Community CAP Water to SRP under Paragraph 14.0 shall be made through the CSIF.

14.1.1 Community CAP Water delivered to SRP under Paragraph 14.0 shall be paid for as provided in Paragraph 8.0. SRP shall not bear any costs associated with the delivery of Community CAP Water to the CSIF or for any Community CAP Water delivered to the CSIF that SRP cannot: (1) receive for reasons including, but not limited to, structural failures of the CSIF or the SRP water delivery system; or (2) transport for reasons including, but not limited to, water quality problems of the Community CAP Water or spill conditions on the Salt River.

14.1.2 If SRP cannot receive or cannot transport Community CAP Water, SRP shall notify the Community and the CAP Operating Agency as soon as practicable in order that the Community can request delivery of the Community's CAP Water to an alternate delivery point.

14.1.3 If SRP has already received Community CAP Water but cannot transport that water to the Community, SRP shall use its best efforts to deliver such water to another water user connected to SRP's water delivery system in exchange for water that would otherwise be delivered to that water user. To the extent that SRP is able to accomplish such an exchange with

February 4, 2003
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another water user, SRP shall credit the SRP Exchange Water Account under the same terms and conditions as SRP Exchange Water Credits under Paragraph 13.0.

14.2 SRP shall establish and maintain the Direct Delivery Account. Unless otherwise agreed to by SRP, the amount of Community CAP Water that the Community may schedule for delivery by SRP shall be determined on an annual basis by SRP as provided in Subparagraph 14.3.

SRP shall provide to the Community and the United States monthly reports of direct deliveries of Community CAP Water to the Community and transportation losses.

14.3 SRP shall deliver one acre-foot of water to the Community for each acre-foot of Community CAP Water delivered to SRP under Paragraph 14.0; provided, however, that the Community shall be charged losses for transportation from the CSIF to the delivery points specified in Subparagraph 12.4.5 at the same rate as transportation losses charged by SRP under Subparagraph 13.5. All water deliveries to the Community under Paragraph 14.0 shall be subject to the terms and conditions provided in Subparagraphs 14.3.1 through 14.3.7.

14.3.1 The direct delivery of Community CAP Water to the Community shall be subject to the limits of the SRP water delivery system capacity provided to the Community under Paragraph 15.0, the delivery points specified in Subparagraph 12.4.5, the restrictions under Subparagraph 12.4.8 and the provisions of Subparagraph 12.10.

14.3.2 The Community shall provide to SRP on or before September 1 of each Year a proposed schedule of the amount of Community CAP Water anticipated to be delivered to SRP

February 4, 2003
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for direct delivery by SRP to the Community during the upcoming Year. The schedule shall include a listing of the amount of Community CAP Water proposed to be delivered to SRP on a monthly basis for direct delivery to the Community which, unless otherwise agreed to in writing by SRP, shall not exceed four thousand (4,000) acre-feet per month or twenty thousand (20,000) AFY.

14.3.3 SRP shall review the Community's proposed schedule and, in consultation with the Community, revise the proposed schedule as may be necessary to permit SRP to satisfy its delivery obligations to its shareholders and to entities with whom SRP has delivery agreements dated prior to the Effective Date. Notwithstanding the preceding sentence, SRP shall work cooperatively and use its best efforts with the Community to agree to a mutually satisfactory delivery schedule.

14.3.4 SRP shall provide to the Community and to the CAP Operating Agency by October 1 of each Year, SRP's schedule of projected monthly deliveries of Community CAP Water to SRP for direct delivery to the Community for the upcoming Year.

14.3.5 On or before December 1 of each Year, the CAP Operating Agency shall provide to SRP and to the Community the CAP Operating Agency Annual Schedule for Community CAP Water to be delivered directly to the Community through the SRP water delivery system during the upcoming Year.

14.3.6 The CAP Operating Agency, SRP or the Community may modify the CAP Operating Agency Annual Schedule as necessary. Any request to modify the CAP Operating

February 4, 2003

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Agency Annual Schedule shall include a notice to the CAP Operating Agency, SRP and the Community, as the case may be, of the requested modification. The CAP Operating Agency shall respond to the request for modification of the CAP Operating Agency Annual Schedule as provided in the Community's CAP Water Delivery Contract and provide a copy to SRP and the Community.

14.3.7 SRP shall have the right to order Community CAP Water scheduled pursuant to article 4.6 of the Community's CAP Water Delivery Contract for delivery to SRP directly from the CAP Operating Agency. SRP shall develop a daily delivery schedule of Community CAP Water orders and notify the CAP Operating Agency and the Community of any changes to the daily delivery schedule in accordance with the CAP Operating Agency's standard ordering procedures.

14.4 The Community shall pay SRP the same amount for each acre-foot of Community CAP Water delivered to SRP through the CSIF for direct delivery to the Community pursuant to Paragraph 14.0 as the Salt River Valley municipalities pay for use of SRP's capacity in the CSIF (nine dollars and fifty-nine cents (\$9.59) per acre-foot for 2002). In addition, the Community shall pay SRP the same transportation charge per acre-foot for each acre-foot of Community CAP Water delivered by SRP to the Community as the Salt River Valley municipalities pay (ten dollars and seventy-nine cents (\$10.79) per acre-foot for 2002). SRP shall notify the Community of the CSIF and transportation charges for the upcoming Year by December 1 of each Year. SRP shall bill the Community for the CSIF and transportation charges based on the total amount of water listed in the CAP Operating Agency Annual Schedule by February 1 of each Year for that

February 4, 2003
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Year. The Community shall pay this amount by March 1 of that Year. The billed amount shall be adjusted to reflect the actual amount of Community CAP Water received and transported by SRP during the previous Year.

14.5 The rights to direct delivery of Community CAP Water provided to the Community by SRP pursuant to Paragraph 14.0 shall not be assignable or transferable by the United States, the Community or Members without the prior written consent of SRP. Any attempted assignment or transfer of such rights without SRP's prior written consent shall be void; provided, however, that the Community shall be treated the same as SRP shareholders with respect to any requested assignments or transfers.

February 4, 2003

Execution copy

15.0 SRP WATER DELIVERY SYSTEM CAPACITY

15.1 SRP shall provide the maximum capacity in the SRP water delivery system to the Community in the amounts specified in Subparagraph 15.2 ("Maximum Capacity") less the amount of SRP Stored Water and Blue Ridge Stored Water ordered by the Community pursuant to Paragraph 12.0 and the amount of Maricopa Contract water ordered by the Community pursuant to Paragraph 7.0. Except as otherwise provided in Paragraph 15.0, Maximum Capacity shall be provided to the Community only at such times as SRP deems such water delivery system capacity to be not necessary for the fulfillment of SRP's other water delivery obligations that exist prior to the Effective Date. SRP shall provide a portion of the Maximum Capacity to the Community in the amounts specified in Subparagraph 15.2, less the amount of SRP Stored Water and Blue Ridge Stored Water ordered by the Community pursuant to Paragraph 12.0 and the amount of Maricopa Contract water ordered by the Community pursuant to Paragraph 7.0, which capacity shall not be interruptible by SRP ("Firm Capacity") except as provided in Subparagraph 12.4.8.

February 4, 2003
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15.2 Unless otherwise agreed to in writing by SRP the Maximum Capacity and Firm Capacity available to the Community in the SRP water delivery system shall be as set forth in the following table:

SRP Water Delivery System Component	Maximum Capacity (CFS)	Firm Capacity Beginning Enforceability Date	Firm Capacity Beginning 1/1/2008
South Canal (All)	150	75	125
Tempe/Western Canal (Consolidated to Gila Drain)	50	40	40
Western Canal (Gila Drain to End)	30	25	25
Eastern Canal	50	25	45
Consolidated Canal	50	50	50
Gila Drain	15	15	15
Dead Horse Ditch	20	15	15
Maricopa Drain	10	10	10

15.3 The water delivery system capacities provided to the Community by SRP pursuant to Paragraph 15.0 shall not be assignable or transferable by the United States, the Community, or Members without the prior written consent of SRP. Any attempted assignment or transfer of these capacities without SRP's prior written

February 4, 2003
Execution copy

16.0 SRP DRAINS

16.1 SRP has constructed and currently operates and maintains certain drainage ditches and structures that are located in whole or in part on the Reservation north of the Gila River ("Drain Ditches"). For purposes of this Agreement, such Drain Ditches include only the following:

16.1.1 The Gila Drain, which has a cross-sectional area of 230.0 square feet where it enters the Reservation in the NW¹/₄ of the NW¹/₄ of Section 4, T2S, R4E;

16.1.2 The Dead Horse Ditch, which has a cross-sectional area of 27.3 square feet, and the Laveen Drain, which has a cross-sectional area of 1.8 square feet where they enter the Reservation in the SW¹/₄ of the SE¹/₄ of Section 7, T1S, R2E;

16.1.3 The Dead Horse Feeder #1, which has a cross-sectional area of 52.5 square feet where it enters the Reservation in the SW¹/₄ of the NW¹/₄ of Section 17, T1S, R2E;

16.1.4 The Dead Horse Feeder #2, which has a cross-sectional area of 24.0 square feet where it enters the Reservation in the NE¹/₄ of the NE¹/₄ of Section 18, T1S, R2E;

16.1.5 The 51st Avenue Drain, which has a cross-sectional area of 50.4 square feet where it enters the Reservation in the NE¹/₄ of the SE¹/₄ of Section 20, T1S, R2E;

16.1.6 The Estrella Drain, which has a cross-sectional area of 17.5 square feet where it enters the Reservation in the SE¹/₄ of the SW¹/₄ of Section 17, T1S, R2E;

16.1.7 The 24E-7S Drain, which has a cross-sectional area of 38.0 square feet where it enters the Reservation in the NE¹/₄ of the NE¹/₄ of Section 12, T2S, R4E;

16.1.8 The 24E-8S Drain, which has a cross-sectional area of 40.5 square feet where it enters the Reservation in the NE¹/₄ of the NE¹/₄ of Section 13, T2S, R4E; and

16.1.9 Consolidated Tail Drain, which enters the Reservation in the SW¹/₄ of the SW¹/₄ of Section 34, T2S, R5E.

16.2 The Community shall accept any water that reaches the Reservation through the Drain Ditches at the location at which those Drain Ditches enter the Reservation; provided, however, that SRP shall not enlarge the Drain Ditches beyond their capacity at the Reservation boundary as of January 1, 2000. The Community shall be solely responsible for conveyance and use of water in the Drain Ditches once the water reaches the Reservation boundary at any of the locations described in Subparagraph 16.1, and shall obtain all rights-of-way or easements necessary to convey the water from the Reservation boundary. The Community shall be responsible for the operation and maintenance of the Drain Ditches to the extent that those facilities are located on lands within the Reservation; provided, however, that such operation and

February 4, 2003

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maintenance by the Community shall not interfere with SRP's ability to discharge water into the Drain Ditches.

16.2.1 The obligation of the Community to accept any water under Subparagraph 16.2 shall, except as to the Gila Drain, expire and be of no further force and effect for any Drain Ditch listed in Subparagraph 16.1 when SRP fails to convey any water to the Reservation boundary through such Drain Ditch for a period of sixty (60) consecutive months.

16.2.2 In the event the United States becomes responsible for the operation of the irrigation and drainage system on the Reservation, then the United States and not the Community shall be responsible for the obligations set forth in Subparagraph 16.2.

16.3 The Community shall have the right to Divert water, to the extent available, from the Drain Ditches; provided, however, that neither SRP nor any other entity shall be required to make water available to the Community in these Drain Ditches except as provided in Paragraphs 12.0, 13.0 and 14.0. SRP shall have the right, at its sole discretion, to discontinue discharging water into any or all of the Drain Ditches, other than the Maricopa Drain, at any time without prior notice to the United States, the Community, Members or the Allottees.

16.4 Except as provided in Subparagraphs 12.7, 13.5 and 14.4, SRP shall not charge the Community any fee or cost for conveyance of any water to the Community

February 4, 2003

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through the Drain Ditches or for Diversion of any water by the Community from any of the Drain Ditches.

16.5 Except as otherwise provided in Paragraph 12.0, SRP shall remove all water flow measuring devices from the Drain Ditches on the Reservation promptly after the Enforceability Date.

16.6 The Community shall indemnify and hold SRP harmless against liability for damages occurring on the Reservation by reason of water being conveyed in the Drain Ditches, except where such damages occur as the result of the sole negligence of SRP.

16.7 The United States, the Community, Members and Allottees shall release and discharge SRP from all obligations and liabilities for damages (other than for personal injury or for damages to personal property) claimed to have been sustained on the Reservation from water discharged by SRP into the Drain Ditches or at any and all other locations on the Reservation at any time prior to the Enforceability Date. For purposes of this Subparagraph 16.7, damages to personal property shall not include Injuries to Water Rights or Injuries to Water Quality.

16.8 Paragraph 16.0 supersedes all previous agreements relating to SRP drainage facilities on the Reservation, including but not limited to: (1) that Agreement Between United States of America and Salt River Valley Water Users' Association for Construction of Drain Ditch across Gila River Indian Reservation, dated June 21,

February 4, 2003

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1923, (2) that drain ditch right-of-way, Permit No. Phoenix-058368, approved on November 27, 1925 (Laveen Drain/Dead Horse Ditch), and (3) that agreement between the Salt River Valley Water Users' Association and the United States acting through the Superintendent, Pima Agency, Bureau of Indian Affairs for and on behalf of the Gila River Indian Community and various owners of trust allotted lands located within the exterior boundaries of the Gila River Indian Reservation, dated September 11, 1981.

16.9 SRP shall contribute prior to the Enforceability Date five hundred thousand dollars (\$500,000) to the Community toward the cost of easements, construction, rehabilitation, operation and maintenance of the Drain Ditches on the Reservation.

16.10 The provisions of Subparagraph 12.10 shall apply to all water conveyed to the Reservation by SRP in the Drain Ditches.

16.11 All rights, title and interest associated with the following agreements, easements and/or right-of-way documents, as they were originally drafted and as they have, or may have, been amended or modified as between the United States of America and the Salt River Valley Water Users' Association, are assigned and transferred as of the Enforceability Date from the Salt River valley Water Users' Association to the Community. Within one hundred eighty (180) days following the Enforceability Date, the Community will record these assignments with the Bureau of Indian Affairs Land, Title, and Records Office in Albuquerque, New Mexico:

February 4, 2003
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16.11.1 Gila Drain Agreement, dated June 21, 1923, as amended;

16.11.2 Dead Horse Ditch, Laveen Drain, Permit No. Phoenix 058368, dated
November 27, 1925; and,

16.11.3 Agreement between the Salt River Valley Water Users' Association and the
United States acting through the Superintendent, Pima Agency, Bureau of Indian
Affairs for and on behalf of the Gila River Indian Community and various owners of
trust allotted lands located within the exterior boundaries of the Gila River Indian
Reservation, dated September 11, 1981.

February 4, 2003

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17.0 CITIES CAP WATER LEASE AGREEMENTS

17.1 The Community shall lease to any or all of the Cities, and the Cities shall lease from the Community, forty-one thousand (41,000) acre-feet of the CAP Indian Priority Water per year for a term of one hundred (100) years from the later of: (1) January 1, 2005, or (2) thirty (30) days after the Enforceability Date. The terms and conditions of the Community's leases to the Cities referenced herein shall be in accordance with the Lease Agreements.

17.1.1 The cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix and Scottsdale may assume a Lease Agreement in accordance with the terms of the assignment and assumption agreements attached as Exhibits 17.1.1A and 17.1.1B. The Lease Agreements shall bind the Cities to those provisions of each City's CAP Subcontract that are enumerated in the Lease Agreement. The Lease Agreements shall not obligate either the Cities or the Community to pay CAP capital repayment charges or any other charges, payments or fees, except as specifically provided in the Lease Agreements. The Cities shall pay operation, maintenance and replacement charges to the CAP Operating Agency in accordance with the terms of the Lease Agreements.

17.1.2 Each of the Cities that elects to lease water in accordance with Paragraph 17.0 shall pay its Water Lease Charge amount pursuant to the terms and conditions of paragraph 4 of the Lease Agreements.

February 4, 2003

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17.2 The Community shall direct the Secretary to deliver the Leased Water in accordance with each City's Lease Agreement, provided, however, that neither the Secretary nor the CAP Operating Agency shall be obligated to make such deliveries if, in the judgment of the CAP Operating Agency or the Secretary, delivery of Leased Water pursuant to a Lease Agreement would limit deliveries of CAP water to other CAP Contractors, CAP Subcontractors or Excess CAP Water Contractors to a degree greater than would delivery of Community CAP Water to the Reservation; provided, however, that Excess CAP Water Contracts that are first entered into after the Lease Agreement has been executed by the Community and the City shall not limit such delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as "first entered into" if the Excess CAP Water Contractor did not hold an Excess CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior Year.

17.3 The following shall occur if the Community, the United States acting in any capacity, the State or a City imposes a tax on: (1) a Lease Agreement or transactions or operations undertaken pursuant to a Lease Agreement, (2) Community CAP Water, (3) the value of the Leased Water, or (4) the transportation of the Leased Water:

17.3.1 If the Community imposes such a tax on a City and such tax is lawfully owed by that City, that amount shall be paid by the Community to that City not less than

February 4, 2003

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thirty (30) days prior to the date that such tax amount is to be paid by that City to the Community;

17.3.2 If the United States acting in any capacity imposes such a tax on a City and such tax is lawfully owed by that City, that amount shall be paid by the Community to that City not less than thirty (30) days prior to the date that such tax amount is to be paid by that City;

17.3.3 If the State imposes such a tax on the Community and such tax is lawfully owed by the Community, that amount shall be paid by the Cities to the Community in proportion to the amount of water each City has leased not less than thirty (30) days prior to the date that such tax amount is to be paid by the Community to the State; and

17.3.4 If a City imposes such a tax on the Community and such tax is lawfully owed by the Community, that amount shall be paid by that City to the Community not less than thirty (30) days prior to the date that such tax amount is to be paid by the Community to that City.

17.4 The quantity of water initially made available for lease to each of the cities of Goodyear, Peoria, Phoenix, and Scottsdale is as set forth in the Lease Agreements.

February 4, 2003

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17.5 The Leased Water shall always be deemed to be a Federal resource held in trust for the benefit of the Community to which the Cities have acquired only a leasehold interest for the term of the Lease Agreements.

17.6 Subject to Subparagraph 29.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibits 17.1A through 17.1D, and Exhibits 17.1.1A and 17.1.1B, the terms of Exhibits 17.1A through 17.1D, and Exhibits 17.1.1A and 17.1.1B shall prevail as among the parties to such Exhibits.

17.7 Notwithstanding any other provision of this Agreement, no Party shall challenge the validity or enforceability of Exhibits 17.1A through 17.1D, or Exhibits 17.1.1A or 17.1.1.B in any judicial, administrative or legislative proceeding.

February 4, 2003

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18.0 CITIES EXCHANGE OF RECLAIMED WATER

18.1 The United States, the Community and the cities of Mesa and Chandler have entered into an agreement, attached as Exhibit 18.1, providing for the exchange of Reclaimed Water, which provides, in part, for the following:

18.1.1 Exchange of twenty-three thousand five hundred thirty (23,530) AFY of Community CAP Exchange Water for twenty-nine thousand four hundred (29,400) AFY of Mesa Reclaimed Water;

18.1.2 Exchange of eight thousand nine hundred seventy (8,970) AFY of Community CAP Exchange Water for eleven thousand two hundred (11,200) AFY of Chandler Exchange Reclaimed Water; and

18.1.3 Chandler's delivery to the Community of four thousand five hundred (4,500) AFY of Chandler Contributed Reclaimed Water.

18.1.4 Subject to Subparagraph 29.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 18.1, the terms of Exhibit 18.1 shall prevail as among the parties to Exhibit 18.1.

February 4, 2003
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19.0 BUCKEYE IRRIGATION COMPANY AND ARLINGTON CANAL COMPANY

19.1 The following agreements between the United States and Buckeye Irrigation Company and the United States and Arlington Canal Company are each ratified, confirmed and made a part of this Agreement on the Enforceability Date; provided, however, that nothing in these agreements shall be construed to limit Pumping of Underground Water on the Reservation when such Pumping is in conformance with the terms and conditions of this Agreement:

19.1.1 Articles of Agreement, San Carlos Federal Irrigation Project and Arlington Canal Company entered into on May 29, 1947, a copy of which is attached as Exhibit 19.1.1; and

19.1.2 Articles of Agreement between the United States of America and Buckeye Irrigation Company entered into on May 29, 1947, a copy of which is attached as Exhibit 19.1.2.

February 4, 2003

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20.0 SCIDD AGREEMENT

20.1 The United States, the Community and SCIDD have entered into an agreement, a copy of which is attached as Exhibit 20.1.

20.2 The ability of SCIDD to perform its obligations under this Agreement is conditioned upon and subject to: (1) the approval of this Agreement by a majority of SCIDD landowners in an election conducted in accordance with A.R.S. §48-3094; and (2) validation of the election results upon petition by SCIDD to the Pinal County Superior Court in accordance with A.R.S. §48-3094.

February 4, 2003
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21.0 TERMS AND CONDITIONS OF FUTURE COMMUNITY CAP WATER LEASE AGREEMENTS

21.1 In addition to those Community CAP Water leases specifically provided for in this Agreement, the Community may enter into other leases of Community CAP Water as provided in Subparagraph 8.5. Such other leases shall conform to the provisions of Paragraph 21.0.

21.2 The lessee shall pay all CAP Fixed OM&R Charges and all CAP Pumping Energy Charges for the leased Community CAP Water to the CAP Operating Agency.

21.3 The Secretary or the CAP Operating Agency shall deliver the leased Community CAP Water to the lessee as further provided herein. Neither the Secretary nor the CAP Operating Agency shall be obligated to make deliveries to such lessee if, in the judgment of the CAP Operating Agency or the Secretary, such deliveries would limit deliveries of water to other CAP Contractors, CAP Subcontractors, or Excess CAP Water Contractors to a degree greater than would deliveries of such Community CAP Water to the Reservation; provided, however, that Excess CAP Water Contracts that are first entered into after the lease of Community CAP Water has been executed shall not limit such delivery. For purposes of the preceding sentence, an Excess CAP Water Contract for delivery of water within a given reach of the CAP System shall be considered as "first entered into" if the Excess CAP Water Contractor did not hold an Excess CAP Water Contract for the delivery of water within the same reach of the CAP System in any prior Year.

21.4 Subject to the provisions of the lease, the Secretary or the CAP Operating Agency shall deliver Community CAP Water to the lessee in accordance with water delivery schedules provided by the lessee to the Secretary or the CAP Operating Agency. The lease shall include water ordering procedures equivalent to those contained in article 4.4 of the standard form of CAP Subcontract for M&I Use that is attached as Exhibit 21.0.

21.5 In no event shall the Secretary or the CAP Operating Agency be required to deliver to the lessee from the CAP System in any one (1) month a total amount of Community CAP Water greater than eleven percent (11%) of the lessee's maximum annual entitlement under the lease; provided, however, that the Secretary or the CAP Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of water to other CAP Contractors, CAP Subcontractors, and Excess CAP Water Contractors as determined by the Secretary and the CAP Operating Agency if the lessee agrees to accept such increased deliveries.

21.6 Community CAP Water to be delivered to the lessee pursuant to the lease shall be delivered at such turnouts on the CAP System as are agreed by the Secretary, the CAP Operating Agency and the lessee.

February 4, 2003

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21.7 The lessee may not transfer, assign or sublease its leased Community CAP Water.

21.8 The lease shall impose upon the lessee terms and conditions equivalent to those contained in subarticles 4.3(a), 4.3(b), 4.3(c), 4.5(b), 4.5(c), and 4.5(d), and articles 4.6, 4.10 and 6.9 of the standard form of CAP Subcontract for M&I Use that is attached as Exhibit 21.0. Although Exhibit 21.0 is the standard form of CAP Subcontract for M&I Use, nothing in this Agreement is intended to preclude leases of Community CAP Water for Irrigation Use.

22.0 COMMUNITY'S WATER MANAGEMENT ON TOKA STICKS TRUST LAND

22.1. The Community shall be entitled to pump and use on the Toka Sticks trust land as described in Exhibit 22.1 up to but not more than six hundred thirty-six (636) AFY of Groundwater for Non-Irrigation Use.

22.2 Subject to Subparagraph 4.4.17, Community CAP Water, Exchange Reclaimed Water and RWCD Surface Water (subject to an agreement with RWCD) may be imported and used on the Toka Sticks trust land.

22.3 Water from sources other than those listed in Subparagraph 4.1, may also be imported and used on the Toka Sticks trust land.

22.4 For so long as the operation of a golf course continues to be the primary use of Toka Sticks trust land: (1) if no Groundwater is pumped and used on the Toka Sticks trust land, then there shall be no limitation on the quantity of water that may be imported and used thereon; (2) if any Groundwater is pumped and used on the Toka Sticks trust land, then for each acre-foot of water imported for use thereon, other than Effluent, the Community's right to pump Groundwater on the Toka Sticks trust land shall be reduced by one acre-foot; and (3) if any Groundwater is pumped and used on the Toka Sticks trust land, then for each acre-foot of Effluent imported for use thereon, the Community's right to pump Groundwater shall be reduced by eight tenths (0.8) of an acre-foot.

February 4, 2003
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22.5 If the Community changes the primary use of the Toka Sticks trust land from operation of a golf course to another use, then the Community shall, upon the Gila River Adjudication Court's finding that the reasonable need for water for such new use(s) is greater than six hundred thirty-six (636) AFY, be entitled to import such additional quantities of water without reducing the quantity of Groundwater pumped and used on the Toka Sticks trust land to the extent that the sum of the imported water and the pumped water does not exceed the reasonable need for the new use(s).

22.6 Water use on the Toka Sticks trust land shall be subject to the Water Code.

23.0 COMMUNITY WATER CODE

- 23.1 The provisions of 25 U.S.C. §381 shall be applicable to the right to an allocation of water for irrigation purposes recognized by Subparagraph 4.1.1 for the benefit of allotted lands within the Reservation. The Community shall have the right, subject to applicable Federal law, to manage, regulate, and control the use on the Reservation and on Off-Reservation Trust Lands of: (1) all of the water rights granted or confirmed to the Community by this Agreement, and (2) the right to an allocation of water for irrigation purposes recognized by Subparagraph 4.1.1 for the benefit of allotted lands within the Reservation.
- 23.2 No later than three (3) Years following the Enforceability Date, the Community shall have enacted a comprehensive Water Code governing all of the water rights granted or confirmed to the Community or allotted lands within the Reservation by this Agreement. Any provisions affecting the rights or interests of Allottees shall be approved by the Secretary. Until the Water Code is enacted and required approvals are obtained from the Secretary, the Secretary shall administer all rights to water granted or confirmed to the Community by this Agreement. The Water Code shall include, at a minimum, the following provisions, which provisions shall be approved by the Secretary:
- 23.2.1 A process by which any Allottee and any Successor in Interest to an Allottee (who has a right to an allocation of water for his or her allotted lands for

February 4, 2003
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irrigation purposes) may request and be provided an allocation of water by the Community for irrigation use on his or her allotted lands in accordance with 25 U.S.C. §381;

23.2.2 A due process system for the consideration and determination of any request by an Allottee and any Successor in Interest to an Allottee (who has a right to an allocation of water by the Community for his or her allotted lands for irrigation purposes) for an allocation of water for irrigation purposes, including a process for appeal and adjudication of denied or disputed requests for an allocation of water and for resolution of contested administrative decisions;

23.2.3 The Community's right to prohibit the severance of water rights from allotted lands; and

23.2.4 The Community's right to regulate the appurtenant right of allotted lands to an allocation of water recognized by Subparagraph 4.1.1 to ensure the use of such water on such allotted lands is reasonable and beneficial.

23.3 Nothing in this Agreement shall be construed to affect an Allottee's right to transfer, convey or lease pursuant and subject to all applicable Federal laws his or her interest in allotted lands, including appurtenant Water Rights as described in

February 4, 2003

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24.0 APPLICABILITY OF FEDERAL RECLAMATION LAWS AND FULL COST PRICING PROVISIONS

24.1 Pursuant to Section 106(c) of the Act, no person, entity or lands shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390aa, *et seq.*) or any full cost pricing provision of Federal law by virtue of: (1) receiving any benefits under the Act, (2) participation in, or the execution or performance of, this Agreement, or (3) the use, storage, delivery, lease, sublease or exchange of CAP water.

24.2 The Parties agree that the purposes of this Agreement will be promoted if the irrigation districts that are in close proximity to the Community and share common aquifers with the Community are encouraged to displace Groundwater Diversions with deliveries of water from the CAP System to as much irrigable land within the districts as is economically feasible. The Parties, other than the United States, agree that the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390aa, *et seq.*) effectively limit the amount of water from the CAP System that may be purchased by these districts, due to land ownership limitations, full cost pricing requirements, and certification and reporting requirements.

24.3 Pursuant to Section 106(c) of the Act, all lands within the exterior boundaries of CAWCD or served by CAP water, all lands within the exterior boundaries of the SRRD, and all lands held in trust by the United States on behalf of Indian tribes that are either within the exterior boundaries of CAWCD or served by CAP water shall be

February 4, 2003

Execution copy

25.0 WAIVERS OF CLAIMS

25.1 Waivers of Claims by Parties Other Than the Community and the United States.

25.1.1 Except as provided in Subparagraph 25.10, the Parties, except the Community and the United States, shall execute a waiver and release of any and all claims that such Parties may have against the Community, Members, Allottees or the United States, under Federal, State or other law for:

25.1.1.1 Past and present Injuries to Water Rights resulting from the Diversion or Use of Water on the Reservation, Off-Reservation Trust Lands or Fee Lands, arising from time immemorial through the Enforceability Date;

25.1.1.2 Injuries to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for the Reservation, Off-Reservation Trust Lands or Fee Lands in a manner not in violation of: (1) this Agreement; or (2) applicable law;

25.1.1.3 Past and present Injuries to Water Quality (other than those claims arising out of the actions that resulted in the remediations listed in Exhibit 25.2.1.6), including but not limited to claims for trespass, nuisance and real property damage, and claims under all current and

February 4, 2003
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future Federal, State and other environmental laws and regulations, and specifically including claims under CERCLA and WQARF, for lands outside the Reservation, Off-Reservation Trust Lands and Fee Lands arising from time immemorial through the Effective Date;

25.1.1.4 Injuries to Water Quality (other than those claims arising out of the actions that resulted in the remediations listed in Exhibit 25.2.1.6) arising after the Effective Date, including but not limited to claims for trespass, nuisance and real property damage, and claims under all current and future Federal, State and other environmental laws and regulations, and specifically including claims under CERCLA and WQARF, that result from: (1) the delivery of Water under the terms of this Agreement; (2) the on-Reservation Diversion, other than pumping, or ownership or operation of structures for the on-Reservation Diversion, other than pumping, of Water; (3) the on-Reservation pumping, or ownership or operation of structures for on-Reservation pumping, of Water in a manner not in violation of this Agreement and not exceeding two hundred thousand (200,000) acre-feet annually after the Build-Out Period; (4) the Recharge, or ownership or operation of structures for Recharge, of Water pursuant to an applicable intergovernmental agreement between the Community and ADWR; or (5) the on-Reservation application of Water to lands for irrigation; provided, however, that the waiver provided in this Subparagraph

February 4, 2003
Execution copy

25.1.1.4 shall extend only to the Community, Members, Allottees or the United States to the extent that they are engaged in the activities listed in (1) through (5) above and only for such activities;

25.1.1.5 Subsidence Damages occurring outside the Reservation, outside Off-Reservation Trust Lands or outside Fee Lands arising from time immemorial through the Enforceability Date; and

25.1.1.6 Past, present and future claims arising out of or related in any manner to the negotiation or execution of this Agreement, or the negotiation or enactment of the Act, or any specific terms or provisions thereof.

25.1.2 The waiver of claims and release described in Subparagraph 25.1 shall be in the form set forth in Exhibit 25.1 and shall become effective upon the Enforceability Date.

25.2 Waiver of Claims by the Community and United States for the Community and Members, but not for Members in their Capacities as Allottees.

25.2.1 Except as provided in Subparagraph 25.6, the Community, on behalf of itself and Members (but not Members in their capacities as Allottees), and the United States as trustee for the Community and Members (but not Members in their capacities as Allottees) shall execute a waiver and release of any and all claims against the State

February 4, 2003

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and any agency or political subdivision thereof, or any other person, entity,

corporation or municipal corporation under Federal, State or other law for:

- 25.2.1.1 Past, present and future claims for Water Rights for lands within the
Reservation, Off-Reservation Trust Lands and Fee Lands arising from
time immemorial, and thereafter, forever;
- 25.2.1.2 Past, present and future claims for Water Rights based upon aboriginal
occupancy of lands by the Community and Members, or their
predecessors, arising from time immemorial, and thereafter, forever;
- 25.2.1.3 Past and present Injuries to Water Rights for lands within the
Reservation, Off-Reservation Trust Lands and Fee Lands arising from
time immemorial through the Enforceability Date;
- 25.2.1.4 Past, present and future Injuries to Water Rights based upon aboriginal
occupancy of lands by the Community and Members, or their
predecessors, arising from time immemorial, and thereafter, forever;
- 25.2.1.5 Injuries to Water Rights arising after the Enforceability Date for lands
within the Reservation, Off-Reservation Trust Lands or Fee Lands
resulting from the off-Reservation Diversion or Use of Water in a

February 4, 2003
Execution copy

manner not in violation of: (1) this Agreement or (2) applicable State law;

25.2.1.6 Past and present Injuries to Water Quality (other than those claims arising out of the actions that resulted in the remediations listed in Exhibit 25.2.1.6) including but not limited to claims for trespass, nuisance and real property damage, and claims under all current and future Federal, State and other environmental laws and regulations, and specifically including claims under CERCLA and WQARF, for lands within the Reservation, Off-Reservation Trust Lands and Fee Lands arising from time immemorial through the Effective Date;

25.2.1.7 Past, present and future Injuries to Water Quality (other than those claims arising out of the actions that resulted in the remediations listed in Exhibit 25.2.1.6) including but not limited to claims for trespass, nuisance and real property damage, and claims under all current and future Federal, State and other environmental laws and regulations, and specifically including claims under CERCLA and WQARF, that are based upon aboriginal occupancy of lands by the Community and Members, or their predecessors, arising from time immemorial, and thereafter, forever;

February 4, 2003

Execution copy

25.2.1.8 Injuries to Water Quality (other than those claims arising out of the actions that resulted in the remediations listed in Exhibit 25.2.1.6) arising after the Effective Date, including but not limited to claims for trespass, nuisance and real property damage, and claims under all current and future Federal, State and other environmental laws and regulations, and specifically including claims under CERCLA and WQARF, that result from: (1) the delivery of Water to the Community under the terms of this Agreement; (2) the off-Reservation Diversion, other than pumping, or ownership or operation of structures for the off-Reservation Diversion, other than pumping, of Water; (3) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of Water in a manner not in violation of this Agreement or of any applicable pumping limitations of State law; (4) the Recharge, or ownership or operation of structures for the Recharge, of Water pursuant to a State permit; or (5) the off-Reservation application of Water to lands for irrigation; provided, however, that the waiver provided in this Subparagraph 25.2.1.8 shall extend only to the State and any agency or political subdivision thereof, or any other person, entity, corporation or municipal corporation engaged in the activities listed in (1) through (5) above and only for such activities;

February 4, 2003

Execution copy

- 25.2.1.9 Past, present and future claims arising out of or related in any manner to the negotiation or execution of this Agreement, or the negotiation or enactment of the Act, or any specific terms or provisions thereof;
- 25.2.1.10 Past and present Subsidence Damages occurring to lands within the Reservation, Off-Reservation Trust Lands or Fee Lands arising from time immemorial through the Enforceability Date; and
- 25.2.1.11 Subsidence Damages arising after the Enforceability Date occurring to lands within the Reservation, Off-Reservation Trust Lands or Fee Lands resulting from the Diversion of Underground Water in a manner not in violation of: (1) this Agreement or (2) applicable State law.
- 25.2.2 The waiver of claims and release described in Subparagraph 25.2 shall be in the form set forth in Exhibit 25.2 and shall become effective upon the Enforceability Date.
- 25.3 Waiver of Claims by the United States for Allottees.
- 25.3.1 Except as provided in Subparagraph 25.6, the United States as trustee for the Allottees, shall execute a waiver and release of any and all claims against the State and any agency or political subdivision thereof, or any other person, entity, corporation or municipal corporation under Federal, State or other law for:

- 25.3.1.1 Past, present and future claims for Water Rights for lands within the Reservation arising from time immemorial, and thereafter, forever;
- 25.3.1.2 Past, present and future claims for Water Rights based upon aboriginal occupancy of lands by Allottees, or their predecessors, arising from time immemorial, and thereafter, forever;
- 25.3.1.3 Past and present Injuries to Water Rights for lands within the Reservation arising from time immemorial through the Enforceability Date;
- 25.3.1.4 Past, present and future Injuries to Water Rights that are based upon aboriginal occupancy of lands by Allottees or their predecessors arising from time immemorial, and thereafter, forever;
- 25.3.1.5 Injuries to Water Rights arising after the Enforceability Date for lands within the Reservation resulting from the off-Reservation Diversion or Use of Water in a manner not in violation of: (1) this Agreement or (2) applicable State law;
- 25.3.1.6 Past and present Injuries to Water Quality (other than those claims arising out of the actions that resulted in the remediations listed in

Exhibit 25.2.1.6) including but not limited to claims for trespass, nuisance and real property damage, and claims under all current and future Federal, State and other environmental laws and regulations, and specifically including claims under CERCLA and WQARF, for lands within the Reservation, arising from time immemorial through the Effective Date;

25.3.1.7 Past, present and future Injuries to Water Quality (other than those claims arising out of the actions that resulted in the remediations listed in Exhibit 25.2.1.6) including but not limited to claims for trespass, nuisance and real property damage, and claims under all current and future Federal, State and other environmental laws and regulations, and specifically including claims under CERCLA and WQARF, that are based upon aboriginal occupancy of lands by Allottees or their predecessors arising from time immemorial, and thereafter, forever;

25.3.1.8 Injuries to Water Quality (other than those claims arising out of the actions that resulted in the remediations listed in Exhibit 25.2.1.6) arising after the Effective Date, including but not limited to claims for trespass, nuisance and real property damage, and claims under all current and future Federal, State and other environmental laws and regulations, and specifically including claims under CERCLA and WQARF, that result from: (1) the delivery of Water to the Community under the terms of this Agreement; (2) the off-Reservation Diversion,

February 4, 2003
Execution copy

other than pumping, or ownership or operation of structures for the off-Reservation Diversion, other than pumping, of Water; (3) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of Water in a manner not in violation of this Agreement or any applicable pumping limitations of State law; (4) the Recharge, or ownership or operation of structures for the Recharge, of Water pursuant to a State permit; or (5) the off-Reservation application of Water to lands for irrigation; provided, however, that the waiver provided in this Subparagraph 25.3.1.8 shall extend only to the State and any agency or political subdivision thereof, or any other person, entity, corporation or municipal corporation engaged in the activities listed in (1) through (5) above and only for such activities;

25.3.1.9 Past and present Subsidence Damages occurring to lands within the Reservation arising from time immemorial through the Enforceability Date; and

25.3.1.10 Past, present and future claims arising out of or related in any manner to the negotiation or execution of this Agreement, or the negotiation or enactment of the Act, or any specific terms or provisions thereof.

February 4, 2003

Execution copy

25.3.2 The waiver of claims and release described in Subparagraph 25.3 shall be in the form set forth in Exhibit 25.3 and shall become effective upon the Enforceability Date.

25.4 Waiver of Claims by the Community and the United States as to SRP.

25.4.1 Except as provided in Subparagraph 25.6, the Community, on behalf of itself and Members (but not Members in their capacities as Allottees), and the United States as trustee for the Community, Members and Allottees shall execute a waiver of claims and release of any and all claims for past and present Injuries to Water Rights, Injuries to Water Quality and injuries to land or real property arising from time immemorial through the Effective Date against SRP, or its successors or assigns, or its officers, governors, directors, employees, agents, or shareholders arising from the discharge, transportation, seepage or other movement of Water in, through or from drains, canals, or other facilities or lands within SRRD to lands within the Reservation.

25.4.2 Except as provided in Subparagraph 25.6, the Community on behalf of itself and Members (but not Members in their capacities as Allottees), and the United States as trustee for the Community, Members and Allottees shall execute a waiver of claims and release of any and all claims for Injuries to Water Rights, Injuries to Water Quality and injuries to land or real property arising after the Effective Date and through the Enforceability Date against SRP, or its successors or assigns, or its officers, governors, directors, employees, agents or shareholders arising from the

February 4, 2003

Execution copy

discharge, transportation, seepage or other movement of Water in, through or from drains, canals, or other facilities or lands within SRRD to lands within the Reservation; provided, however, that SRP, or its successors or assigns, acts in conformance with SRP's Annual Reservoir Operations Plan through the Enforceability Date.

25.4.3 The waiver of claims and release described in Subparagraph 25.4 shall be in the form set forth in Exhibit 25.4 and shall become effective upon the Enforceability Date.

25.4.4 The waivers and releases granted to SRP pursuant to this Subparagraph 25.4, together with Exhibit 25.4, shall be in addition to, and not in substitution of the waivers and releases granted to SRP and others pursuant to Subparagraphs 25.2, 25.3 and 25.5, together with Exhibits 25.2, 25.3 and 25.5.

25.5 Waivers of Claims for Subsidence Damages by Allottees and Members Arising After the Enforceability Date.

25.5.1 As a condition of remediation from the subsidence remediation program established pursuant to Section 209 of the Act for a claim for Subsidence Damages to his or her allotted land or related personal property claims arising after the Enforceability Date, an Allottee and the United States as trustee for such Allottee shall execute a waiver of claims and release of all claims against the State and any agency or political subdivision thereof, or any other person, entity, corporation or municipal

February 4, 2003

Execution copy

corporation under Federal, State or other law for the Subsidence Damages for which the Allottee or the United States has made a claim.

25.5.2 As a condition of receiving remediation from the subsidence remediation program established pursuant to Section 209 of the Act for claims for damages to his or her personal property arising after the Enforceability Date resulting from the settling of geologic strata or cracking in the earth's surface of any length or depth, which settling or cracking is caused by Pumping, a Member and the United States as trustee for such Member, shall execute a waiver of claims and release of all claims against the State and any agency or political subdivision thereof, or any other person, entity, corporation or municipal corporation under Federal, State or other law for the damages for which the Member or the United States has made a claim.

25.5.3 As a condition of receiving remediation from the subsidence remediation program established pursuant to Section 209 of the Act for claims for damages to personal property arising after the Enforceability Date resulting from the settling of geologic strata or cracking in the earth's surface of any length or depth, which settling or cracking is caused by Pumping, the Community and the United States as trustee for the Community, shall execute a waiver of claims and release of all claims against the State and any agency or political subdivision thereof, or any other person, entity, corporation or municipal corporation under Federal, State or other law for the damages for which the Community or the United States has made a claim.

February 4, 2003

Execution copy

25.5.4 The waiver of claims and releases described in Subparagraphs 25.5.1, 25.5.2, and 25.5.3 shall be in the form set forth in Exhibits 25.5.1, 25.5.2, and 25.5.3 respectively. The waiver of claims and release described in Subparagraphs 25.5.1, 25.5.2 and 25.5.3 shall become effective upon satisfactory completion of the requested repair or remediation. The repair or remediation shall be deemed satisfactory when completed or, if contested, upon conclusion of any applicable appeal process available to the Community, Member or Allottee for contesting whether the repair or remediation is satisfactory.

25.6 Reservation of Rights and Retention of Claims by the Community and the United States.

25.6.1 Notwithstanding the waivers of claims and releases described in Subparagraphs 25.2, 25.3, 25.4 and 25.15, the Community and the United States shall retain any right to:

25.6.1.1 Subject to Subparagraph 29.8, assert claims for injuries to, and seek enforcement of, the rights of the Community under this Agreement or the Act, in any court of competent jurisdiction, but not the courts of the Community;

25.6.1.2 Assert claims for injuries to, and seek enforcement of, the rights of the Community under the judgment and decree entered by the court in the

February 4, 2003
Execution copy

Gila River Adjudication Proceedings, the form of which is attached as Exhibit 25.11A;

- 25.6.1.3 Subject to Paragraph 26.0, and the Exhibits enumerated in such Paragraph, assert claims for injuries to, and seek enforcement of, the rights of the Community under the Globe Equity Decree including, but not limited to, the judgment and decree entered by the Globe Equity Enforcement Court, the form of which is attached as Exhibit 25.11B;
- 25.6.1.4 Object to any claims by or for any other Indian tribe, community, nation or dependent Indian Community (as defined in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;
- 25.6.1.4A Assert claims for Injuries to Water Rights, Injuries to Water Quality or Subsidence Damages, or any other claims other than a claim to Water Rights, against any other Indian tribe, community, nation or dependent Indian community (as set forth in 25 U.S.C. § 450b(e)), or the United States on behalf thereof;
- 25.6.1.5 Participate in the Gila River Adjudication Proceedings to the extent provided in Subparagraph 28.1;

February 4, 2003

Execution copy

- 25.6.1.6 Assert any claims arising after the Enforceability Date for Injuries to Water Rights, or for Subsidence Damages not specifically waived herein;
- 25.6.1.7 Assert any claims arising out of the actions that resulted in the remediations listed in Exhibit 25.2.1.6;
- 25.6.1.8 Assert any claims arising after the Effective Date for Injuries to Water Quality not specifically waived herein;
- 25.6.1.9 Assert any claims for past, present or future Injuries to Water Quality arising out of activities occurring within the exterior boundaries of the Reservation, Off-Reservation Trust Lands or Fee Lands undertaken by the parties to and pursuant to the contracts, agreements or business licenses listed in Exhibits 25.6.1.9A through D;
- 25.6.1.10 Assert any claims for Injuries to Water Quality arising after the Effective Date out of activities occurring within the exterior boundaries of the Reservation, Off-Reservation Trust Lands or Fee Lands undertaken by the parties to any contract or agreement with the Community or the United States entered into after the Effective Date that contemplates any of the following activities, services or transactions: (1) leases of land or other occupancy agreements for

lands located within the exterior boundaries of the Reservation, Off-Reservation Trust Lands or Fee Lands, (2) the provision of services or goods on, other than the delivery of Water to, lands located within the exterior boundaries of the Reservation, Off-Reservation Trust Lands or Fee Lands, or (3) activities undertaken pursuant to a business license issued by the Community.

- 25.6.1.11 Assert any claims for Injuries to Water Quality arising before the Enforceability Date resulting from the illicit placement (other than through the delivery, Diversion or Use of Water) of hazardous substances on lands located within the exterior boundaries of the Reservation, Off-Reservation Trust Lands or Fee Lands;
- 25.6.1.12 Assert against RWCD any claims for Injuries to Water Rights, Injuries to Water Quality or Subsidence Damages, or any other claims other than a claim to Water Rights, until the RWCD Agreement has been approved by the Gila River Adjudication Court in Contested Case No. W1-205 within the Gila River Adjudication Proceedings and such approval is either final following an interlocutory appeal or no longer subject to interlocutory appeal. Thereafter, subject to Paragraph 9.0 the Community and the United States shall retain the right to enforce their rights under the RWCD Agreement.

February 4, 2003

Execution copy

- 25.6.1.13 Object to any claims of Water Rights by or for RWCD until the RWCD Agreement has been approved by the Gila River Adjudication Court in Contested Case No. W1-205 within the Gila River Adjudication Proceedings and such approval is either final following an interlocutory appeal or no longer subject to interlocutory appeal. Thereafter, subject to Paragraph 9.0 the Community and the United States shall retain the right to enforce their rights under the RWCD Agreement.
- 25.6.1.14 Assert any claims for Injuries to Water Rights, Injuries to Water Quality or Subsidence Damages, or any other claim other than a claim to Water Rights, against the State and any agency or subdivision thereof, or any other person, entity, corporation or municipal corporation under Federal, State or other law that is Diverting, pumping or using water in a manner that is in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Exhibits 26.2; provided that Phelps Dodge shall continue to enjoy the benefits of the waiver set forth in the Community/Phelps Dodge Agreement.
- 25.6.1.15 Assert any claims arising after the Enforceability Date for Injuries to Water Rights, Injuries to Water Quality or Subsidence Damages, or any other claim other than a claim for Water Rights against any Non-GE 59

February 4, 2003
Execution copy

Water User Diverting or using water upstream from the Ashurst-Hayden Dam in a manner in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2.

- 25.6.1.16 Object to any claims of Water Rights by or for Phelps Dodge if the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein) has not occurred.
- 25.6.1.17 Assert against Phelps Dodge any claims for Injuries to Water Rights, Injuries to Water Quality or Subsidence Damages, or any other claims other than a claim to Water Rights, if the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein) has not occurred.
- 25.6.1.18 Object to any claims of Water Rights by or for Safford if Safford elects to terminate the Safford Agreement pursuant to subparagraph 18.1.2 thereof.
- 25.6.1.19 Assert against Safford any claims for Injuries to Water Rights, Injuries to Water Quality or Subsidence Damages, or any other claims other than a claim to Water Rights if Safford elects to terminate the Safford Agreement pursuant to Subparagraph 18.1.2 thereof.

- 25.6.1.20 Object to any claims of Water Rights by or for BHP.
- 25.6.1.21 Subject to Subparagraph 26.8.7.1, assert against BHP any claims for
Injuries to Water Rights, Injuries to Water Quality or Subsidence
Damages, or any other claims other than a claim to Water Rights.
- 25.6.1.22 Object to any claims of Water Rights by or for Asarco.
- 25.6.1.23 Assert against Asarco any claims for Injuries to Water Rights, Injuries
to Water Quality or Subsidence Damages, or any other claims other
than a claim to Water Rights.
- 25.6.1.24 Object to any claims to Water Rights by or for AWC as to the use of
water in the Winkelman CC&N and the San Manuel CC&N.
- 25.6.1.25 Subject to Subparagraph 26.8.2.7.2, assert against AWC any claims for
Injuries to Water Rights, Injuries to Water Quality or Subsidence
Damages, or any other claims other than claims to Water Rights.
- 25.6.1.26 Object to any claims to Water Rights by or for the Town of
Winkelman.

February 4, 2003

Execution copy

25.6.1.27 Subject to Subparagraph 26.8.2.7.3, assert against the Town of Winkelman any claims for Injuries to Water Rights, Injuries to Water Quality or Subsidence Damages, or any other claims other than claims to Water Rights.

25.6.2 Nothing in Paragraph 25.0 shall preclude either the United States (except in its capacity as trustee on behalf of the Community, Members or Allottees) or the State, from taking any action to enforce any law or regulation relating to Water quality or otherwise relating to the protection of the environment.

25.7 Assistance in Identifying Hazardous Substance Discharges. The Community may request any Party to assist it in identifying a discharge of a substance that may be contributing to an exceedance of an applicable State or Federal standard at the point of delivery of Water to the Community and any Party so requested shall provide such assistance. The Party shall have fully satisfied this obligation by providing to the Community, at the Community's expense, relevant, non-privileged information in its possession that may assist the Community in identifying the discharge.

25.8 Relation of Waiver to Other Contracts. The Community's and the United States' waiver of claims relating to Injuries to Water Quality in Paragraph 25.0 shall be in addition to the other terms and conditions of any contract with the Community or the United States for the delivery of Water.

25.9 Replacement, Substitution, and Satisfaction of Water Rights and Other Benefits.

25.9.1 The Water Rights and other benefits granted, confirmed or recognized to or for the Community, Members, Allottees and the United States by this Agreement and the Act shall be in replacement of, in substitution for, and in full satisfaction of all claims for Water Rights by the Community, Members, Allottees and the United States. Furthermore, the Water Rights and other benefits granted, confirmed or recognized to or for the Community, Members, Allottees and the United States by this Agreement and by the Act shall be in replacement of, substitution for, and in full satisfaction of all claims for Injuries to Water Rights, claims for Injuries to Water Quality, and claims for Subsidence Damages of the Community, Members, Allottees and the United States, except as otherwise retained herein.

25.9.2 Any entitlement to Water of the Community, Members, any Allottee or any Successor in Interest to an Allottee, or the United States for lands within the Reservation, Off-Reservation Trust Lands and Fee Lands shall be satisfied out of the Water resources and other benefits granted, confirmed or recognized to or for the Community, Members, Allottees and the United States by this Agreement and in the Act.

25.10 Reservation of Rights and Retention of Claims by the Parties Other than the Community or the United States. Notwithstanding the waivers of claims and releases

February 4, 2003

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described in Subparagraph 25.1, the Parties, other than the Community and the United States, shall retain any right to:

25.10.1 Subject to Subparagraph 29.8, assert claims for injuries to, and seek enforcement of, the rights of the Parties under this Agreement or the Act in any court of competent jurisdiction, but not the courts of the Community;

25.10.2 Assert claims for injuries to, and seek enforcement of, the rights of the Parties under the judgment and decree issued by the court in the Gila River Adjudication Proceedings, the form of which is attached as Exhibit 25.11A;

25.10.3 Assert claims for injuries to and seek enforcement of their respective rights under the Globe Equity Decree including, but not limited to, the judgment and decree, the form of which is attached as Exhibit 25.11B;

25.10.4 Assert past, present and future claims to Surface Water that are consistent with this Agreement as well as any additional claims that do not adversely affect the Community's Water Rights as provided for by this Agreement or the Act;

25.10.5 Assert any claims to Underground Water that are subject to the Gila River Adjudication Proceedings;

February 4, 2003

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25.10.6 Assert any claims for Injuries to Water Rights not specifically waived herein;

25.10.7 Assert any claims for Injuries to Water Quality not specifically waived herein;

25.10.8 With respect to Phelps Dodge only and no other party, Phelps Dodge may assert any claim otherwise waived pursuant to Subparagraph 25.1 of this agreement if the "Final Effective Date" of the Community/Phelps Dodge Agreement as that term is defined therein has not occurred;

25.10.9 Assert any claims, except against the Community or the United States, arising out of the actions that resulted in the remediations listed in Exhibit 25.2.1.6.

25.11 Stipulations and Forms of Judgment. The Parties shall file a stipulation and form of judgment and decree in the Gila River Adjudication Proceedings in the form of Exhibits 25.11A.1 and 25.11A.2 and a stipulation and form of judgment in the Globe Equity Enforcement Court in the form of Exhibit 25.11B.

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25.12 Lands Outside the Reservation. Nothing in this Agreement shall affect any rights to Water of the Community, the United States, or any Member, Allottee or Successor in Interest to an Allottee for lands outside the Reservation that are not Off-Reservation Trust Lands or Fee Lands.

25.13 Individual Member Rights. Nothing in this Agreement shall affect any rights of any Member to bring any action available under law for personal injuries or personal property damage. For purposes of this Agreement, personal property damage shall not include claims for Water Rights, Injuries to Water Rights, or Injuries to Water Quality.

25.14 Lone Butte Agreement. Nothing in Paragraph 25.0 shall be construed in a manner to limit the Community's or the City of Chandler's rights or remedies under the agreement between the Community and the City of Chandler, dated December 16, 1981, and any amendments or extensions thereof.

25.15 Waivers of Claims by the Community against the United States.

25.15.1 Except as provided in Subparagraph 25.6, the Community, on behalf of itself and Members (but not Members in their capacities as Allottees) shall execute a waiver and release of any and all claims against the United States, its agencies, officials and employees under Federal, State or other law for all:

25.15.1.1 Past, present and future claims for Water Rights for lands within the Reservation, Off-Reservation Trust Lands and Fee Lands arising from time immemorial, and thereafter, forever;

February 4, 2003

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- 25.15.1.2 Past, present and future claims for Water Rights based upon aboriginal occupancy of lands by the Community and Members, or their predecessors, arising from time immemorial, and thereafter, forever;
- 25.15.1.3 Past and present Injuries to Water Rights for lands within the Reservation, Off-Reservation Trust Lands and Fee Lands arising from time immemorial through the Enforceability Date;
- 25.15.1.4 Past, present and future Injuries to Water Rights based upon aboriginal occupancy of lands by the Community and Members, or their predecessors, arising from time immemorial, and thereafter, forever;
- 25.15.1.5 Injuries to Water Rights arising after the Enforceability Date for lands within the Reservation, Off-Reservation Trust Lands or Fee Lands resulting from the off-Reservation Diversion or Use of Water in a manner not in violation of: (1) this Agreement or (2) applicable law;
- 25.15.1.6 Past, present and future claims arising out of or related in any manner to the negotiation or execution of this Agreement, or the negotiation or enactment of the Act, or any specific terms or provisions thereof;

February 4, 2003

Execution copy

- 25.15.1.7 Past and present Subsidence Damages occurring to lands within the Reservation, Off-Reservation Trust Lands or Fee Lands arising from time immemorial through the Enforceability Date;
- 25.15.1.8 Subsidence Damages arising after the Enforceability Date for Damages occurring to lands within the Reservation, Off-Reservation Trust Lands or Fee Lands resulting from the Diversion of Underground Water in a manner not in violation of: (1) this Agreement or (2) applicable law; and
- 25.15.1.9 Past and present claims for failure to protect, acquire or develop Water Rights for or on behalf of the Community and its Members arising from time immemorial through the Effective Date.
- 25.15.2 The waiver of claims and release described in Subparagraph 25.15.1 shall be in the form set forth in Exhibit 25.15.1 and shall become effective upon the Enforceability Date.
- 25.16 Waivers of Claims by the United States against the Community.
- 25.16.1 The United States acting in all of its capacities shall execute a waiver and release of any and all claims against the Community, its agents, officials and employees under Federal, State or any other law for all:

February 4, 2003
Execution copy

- 25.16.1.1 Past, present and future claims for Water Rights arising from time immemorial, and thereafter, forever;
- 25.16.1.2 Past and present Injuries to Water Rights arising from time immemorial through the Enforceability Date;
- 25.16.1.3 Injuries to Water Rights arising after the Enforceability Date resulting from the Diversion or Use of Water on or for the Reservation, Off-Reservation Trust Lands or Fee Lands in a manner not in violation of: (1) this Agreement or (2) applicable law;
- 25.16.1.4 Past, present and future claims arising out of or related in any manner to the negotiation or execution of this Agreement, or the negotiation or enactment of the Act, or any specific terms or provisions thereof;
- 25.16.1.5 Past and present Injuries to Water Quality, including but not limited to claims for trespass, nuisance and real property damage, and claims under all current and future Federal, Arizona and other environmental laws and regulations, and specifically including claims under 42 U.S.C. §§ 9601-9675, as amended, and Ariz. Rev. Stat. § 49-282, as amended, arising from time immemorial through the Effective Date;
and

25.16.1.6 Past and present Subsidence Damages arising from time immemorial through the Enforceability Date.

25.16.2 The waiver of claims and release described in Subparagraph 25.16.1 shall be in the form set forth in Exhibit 25.16.1 and shall become effective upon the Enforceability Date.

25.17 Voluntary Dismissal.

25.17.1 The Gila River Indian Community for and on behalf of itself and its members shall re-file in the United States District Court for the District of Arizona, a complaint in a form identical to that complaint filed in the action styled *Gila River Indian Community for and on behalf of itself and its members, Plaintiffs v. the Gila Valley Irrigation District, et al., Defendants* CIV No. 82-2185, PHX CAM. The Gila River Indian Community for and on behalf of itself and its members shall then promptly file the voluntary dismissal with prejudice of this complaint in the form set forth in Exhibit 25.17.1A. With respect to RWCD, the Community shall promptly file a voluntary dismissal with prejudice of this complaint in the form set forth in Exhibit 25.17.1B in such action at such time as the RWCD Agreement has been approved by the Gila River Adjudication Court in Contested Case No. W1-205 within the Gila River Adjudication Proceedings and such approval is either final following an interlocutory appeal

February 4, 2003

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or is no longer subject to interlocutory appeal. With respect to Phelps Dodge and its predecessors in interest, upon the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein), the Community shall promptly file a voluntary dismissal with prejudice of this complaint in the form set forth in Exhibit 25.17.1C.

25.17.2 With respect to all defendants other than RWCD, the United States shall promptly file in the United States District Court for the District of Arizona, a voluntary dismissal with prejudice in the form set forth in Exhibit 25.17.2A in the action styled *United States of America on behalf of the Gila River Indian Community v. Roosevelt Water Conservation District, et al.*, CIV No. 82-2174, PHX RGS. With respect to RWCD, the United States shall promptly file a voluntary dismissal with prejudice in the form set forth in Exhibit 25.17.2B in such action at such time as the RWCD Agreement has been approved by the Gila River Adjudication Court in Contested Case No. W1-205 within the Gila River Adjudication Proceedings and such approval is either final following interlocutory appeal or no longer subject to interlocutory appeal.

25.17.3 With respect to all defendants other than Asarco, Phelps Dodge, AWC, BHP, the Town of Winkelman (and the affiliates of, and predecessors in interest and successors in interest to, each of the aforementioned entities), the Gila River Indian Community for and on behalf of itself and its Members shall

February 4, 2003

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promptly file in the United States District Court for the District of Arizona a voluntary dismissal with prejudice in the form set forth in Exhibit 25.17.3A in the action styled *Gila River Indian Community, for and on behalf of itself, Plaintiffs v. American Smelting and Refining Company, et al., Defendants* No. CIV 78-145 TUC WDB. With respect to Phelps Dodge and its predecessors in interest, upon the "Final Effective Date" of the Community/Phelps Dodge Agreement (as that term is defined therein), the Gila River Indian Community for and on behalf of itself and its Members shall promptly file in the United States District Court for the District of Arizona a voluntary dismissal with prejudice in the form set forth in Exhibit 25.17.3B in the action styled *Gila River Indian Community for and on behalf of itself and its members, Plaintiffs v. American Smelting and Refining Company, et al. Defendants*, No. CIV 78-145 TUC WDB.

February 4, 2003

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26.0 UPPER GILA VALLEY AND GILLESPIE DIVERTERS

- 26.1 City of Safford. The Community, SCIDD, the United States on behalf of each and the City of Safford have entered into the Safford Agreement, a copy of which is attached as Exhibit 26.1. Subject to Subparagraph 29.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 26.1, the terms of Exhibit 26.1 shall prevail, as among the parties to Exhibit 26.1.
- 26.2 Upper Valley Irrigation Districts and other parties. The Community, SCIDD, the United States acting in its capacity as operating agent for the San Carlos Indian Irrigation Project and as owner of all Water Rights described as belonging to the plaintiff in Articles V or VI of the Globe Equity Decree (excluding those described in Article VI(2)), Franklin Irrigation District, the Gila Valley Irrigation District, and other parties located in the Upper Valley of the Gila River have entered into the UVD Agreement, a copy of which is attached as Exhibit 26.2. Subject to Subparagraph 29.3 of this Agreement, in the event of a conflict between the terms of this Agreement and the terms of Exhibit 26.2, the terms of Exhibit 26.2 shall prevail, as among the parties to Exhibit 26.2 and all UVDs as that term is defined therein, except those UVDs that are signatories to this Agreement.
- 26.3 Duncan. The Community, SCIDD, the United States on behalf of each, and the Town of Duncan have entered into the Duncan Agreement, a copy of which is attached as Exhibit 26.3.

- 26.4 Kearny. The Community, SCIDD, the United States on behalf of each and the Town of Kearny have entered into the Kearny Agreement, a copy of which is attached as Exhibit 26.4.
- 26.5 Mammoth. The Community, SCIDD, the United States on behalf of each and the Town of Mammoth have entered into the Mammoth Agreement, a copy of which is attached as Exhibit 26.5.
- 26.6 Paloma Agreement. The Community, SCIDD, the United States on behalf of each and the Gillespie Diverters have entered into the Paloma Agreement, a copy of which is attached as Exhibit 26.6. Notwithstanding the attachment of the Paloma Agreement to this Agreement, the Gillespie Diverters are not, and shall be deemed to be, Parties to this Agreement for any purpose whatsoever. The Parties acknowledge and confirm that the Paloma Agreement: (1) is binding solely on the parties to the Paloma Agreement, and (2) may be amended by the parties thereto, provided, that any such amendment shall be solely binding on such parties.
- 26.7 No Effect on Non-parties to Exhibits. Nothing in any Exhibit shall be construed to preclude any Party that is not also a party to such Exhibit from enforcing their rights, if any, with respect to the use of water from within the watershed of the Gila River.
- 26.8 Non-GE 59 Water Users in the Upper Gila River Watershed.

26.8.1 State legislation/Upper Gila River Watershed Maintenance Program. The Parties agree to the establishment of an Upper Gila River Watershed Maintenance Program. It will be necessary to enact State legislation to establish the Upper Gila River Watershed Maintenance Program. For purposes of establishing the Enforceability Date, the date of establishment of the Upper Gila River Watershed Maintenance Program shall be the date on which the Secretary, with the concurrence of the Community and the Director of ADWR, certifies in writing that State legislation has been enacted that: (1) meets the minimum requirements set forth in Exhibit 26.8.1; and (2) shall take effect not later than the Enforceability Date. The continued existence and enforcement of the Upper Gila River Watershed Maintenance Program shall constitute a term and condition of the Community's and SCIDD's provision of the safe harbors set forth in Subparagraph 26.8.2, a violation of which term and condition shall nullify the safe harbors set forth therein.

26.8.2 Safe harbor uses of Water.

26.8.2.1 Applicable only to Non-GE 59 Water Users. The safe harbor provisions of this Subparagraph 26.8.2 shall be construed to benefit only Non-GE 59 Water Users.

26.8.2.2 Water Diverted outside the Impact Zones. The Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any

February 4, 2003

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Non-GE 59 Water Users' use of water Diverted from outside the Impact Zones. For purposes of the safe harbors set forth in Subparagraph 26.8.2, a well that is drilled after the Effective Date and that is located outside of the exterior boundary of an Impact Zone, but the pumping of which results in a cone of depression that extends into an Impact Zone, shall be considered to be Diverting water from within such Impact Zone. Whether and the extent to which pumping from a well located outside the exterior boundary of an Impact Zone results in a cone of depression that extends into an Impact Zone and is considered to be Diverting water from within such Impact Zone shall be determined in accordance with the cone of depression test standard that is to be determined by the Gila River Adjudication Court; provided, however, that any well for Domestic Purposes only that is located more than one-quarter (1/4) mile outside the exterior boundary of an Impact Zone shall be deemed to be Diverting water from outside such Impact Zone.

26.8.2.3 Water Diverted for Irrigation Uses from within the San Pedro Ag and New Large Industrial Use Impact Zone. The Community, SCIDD, and the United States on behalf of each and on behalf of Allottees, shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water User's use of water Diverted from within the San Pedro Ag and New Large Industrial Use Impact Zone for irrigation of Eligible Safe Harbor Acres; provided, however, that the Community, SCIDD, and the United States on behalf of each and on behalf of Allottees, may, after adjudication of a Non-GE 59 Water User's right in the Gila River Adjudication Proceedings, object to such Non-GE 59 Water User's use of water if that use exceeds such Non-GE 59 Water User's adjudicated water entitlement. To be an eligible Non-GE

February 4, 2003
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59 Water User under this Subparagraph 26.8.2.3, a Non-GE 59 Water User must file with the Gila River Adjudication Court, with a copy to the Community, SCIDD and the United States on behalf of each and on behalf of Allottees, a description of the Eligible Safe Harbor Acres that they own. The Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall have the right to challenge the accuracy of such filing.

26.8.2.4 Water Diverted for M&I Uses from within the San Pedro M&I and Domestic Purposes Impact Zones or the Gila River Impact Zone. With respect to any Non-GE 59 Water User using water Diverted from within the San Pedro M&I and Domestic Purposes Impact Zone or the Gila River Impact Zone for M&I Uses, the Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water User's Diversion or use of such water for an M&I Use so long as such Diversion or use does not exceed the highest amount used by such Non-GE 59 Water User for such M&I Use in any of the Years during the period 1997-2001, inclusive; provided, however, that the Community, SCIDD and the United States on behalf of each and on behalf of Allottees, may, after adjudication of a Non-GE 59 Water User's right in the Gila River Adjudication Proceedings, object to such Non-GE 59 Water User's Diversion or use of water if that use exceeds such Non-GE 59 Water User's adjudicated water entitlement. To be an eligible Non-GE 59 Water User under this Subparagraph 26.8.2.4, a Non-GE 59 Water User must file with the Gila River Adjudication Court, with a copy to the Community, SCIDD and the United States on behalf of each and on behalf

February 4, 2003

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of Allottees, an accounting of water Diverted from within an Impact Zone and used for M&I Uses during the period 1997 through 2001, inclusive. The Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall have the right to challenge the accuracy of such filing.

26.8.2.5 Water Diverted for Domestic Purposes. The Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any Non-GE 59 Water User's use of water for a Domestic Purpose existing as of the Effective Date.

26.8.2.5.1 San Pedro M&I and Domestic Purposes Impact Zone. The Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water Users' use of water Diverted from within the San Pedro M&I and Domestic Purposes Impact Zone for New Domestic Uses. Upon the filing of a Notice of Intention to Drill under A.R.S. §45-596 by a Non-GE 59 Water User with ADWR for a new well that is located within the San Pedro Ag and New Large Industrial Use Impact Zone or within the area one-quarter (1/4) mile outside the exterior boundary of such Impact Zone, ADWR shall notify such Non-GE 59 Water User in writing of: (i) the safe harbor created by this Subparagraph 26.8.2.5.1; and (ii) the fact that to be eligible for such safe harbor, the Non-GE 59 Water User drilling such new well must provide information to the Community and SCIDD relating to the New Domestic Use as set forth in a form to be mutually agreed upon among ADWR,

February 4, 2003
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SCIDD and the Community. To be an eligible Non-GE 59 Water User under this Subparagraph 26.8.2.5.1: (i) a Non-GE 59 Water User must file the form described in the preceding sentence with the Community and SCIDD within sixty (60) days of its receipt of notice from ADWR; (ii) the New Domestic Use must be limited to no more than 2 acre-feet per well per Year; and (iii) the total use of water for all New Domestic Uses at the time of the filing with the Community and SCIDD required in clause (i) above must not exceed one thousand (1,000) AFY, provided that at least twenty-five (25) of the wells allowed pursuant to this Subparagraph shall be reserved for use on State trust lands.

26.8.2.5.2 Gila River Impact Zone. The Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall not exercise their rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water Users' use of water Diverted from within the Gila River Impact Zone for New Domestic Use. Upon the filing of a Notice of Intention to Drill under A.R.S. § 45-596 by a Non-GE 59 Water User with ADWR for a new well that is located within the Gila River Impact Zone or within the area one-quarter ($\frac{1}{4}$) mile outside the exterior boundary of such Impact Zone, ADWR shall notify such Non-GE 59 Water User in writing of: (i) the safe harbor created by this Subparagraph 26.8.2.5.2; and (ii) the fact that to be eligible for such safe harbor, the Non-GE 59 Water User drilling such new well must provide information to the Community and SCIDD relating to the New Domestic Use as set forth in a form to mutually agreed upon among ADWR, SCIDD and the Community. To be an eligible Non-GE 59 Water User under this Subparagraph

February 4, 2003

Execution copy

26.8.2.5.2; (i) a Non-GE 59 Water User must file the form described in the preceding sentence with the Community and SCIDD within sixty (60) days of its receipt of notice from ADWR; (ii) and the New Domestic Use must be limited to no more than 2 acre-feet per well per Year; and (iii) the total use of water for all New Domestic Uses at the time of the filing with the Community and SCIDD required in clause (i) above must not exceed one thousand (1,000) AFY, provided that at least fifteen (15) of the wells allowed pursuant to this Subparagraph shall be reserved for use on State trust lands.

26.8.2.6 Water Diverted for New Large Industrial Use from within the San Pedro Ag and New Large Industrial Use Impact Zone or the Gila River Impact Zone. The Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon any eligible Non-GE 59 Water Users' use of such water for a New Large Industrial Use within the San Pedro Ag and New Large Industrial Use Impact Zone or the Gila River Impact Zone so long as such use does not exceed the New Large Industrial Use Cap; provided, however, that the Community, SCIDD and the United States on behalf of each and on behalf of Allottees, may, after adjudication of a Non-GE 59 Water User's right in the Gila River Adjudication Proceedings, object to such Non-GE 59 Water User's New Large Industrial Use of water if that use exceeds such Non-GE 59 Water User's adjudicated water entitlement.

26.8.2.6.1 San Pedro Ag and New Large Industrial Use Impact Zone. Upon the filing of a Notice of Intention to Drill under A.R.S. §45-596 by a Non-GE 59 Water User

with ADWR for a new well that is located within the San Pedro Ag and New Large Industrial Use Impact Zone or within the area three (3) miles outside the exterior boundary of such Impact Zone, ADWR shall notify such Non-GE 59 Water User in writing of: (i) the safe harbor created by this Subparagraph 26.8.2.6.1; and (ii) the fact that to be eligible for such safe harbor, the Non-GE 59 Water User drilling such new well must provide information to the Community and SCIDD relating to the New Large Industrial Use as set forth in a form to mutually agreed upon among ADWR, SCIDD and the Community. To be an eligible Non-GE 59 Water User under this Subparagraph 26.8.2.6.1, a Non-GE 59 Water User must file the form described in the preceding sentence with the Community and SCIDD within sixty (60) days of its receipt of notice from ADWR and the New Large Industrial Use must be limited to no more than the New Large Industrial Use Cap.

26.8.2.6.2 Gila River Impact Zone. Upon the filing of a Notice of Intention to Drill under A.R.S. §45-596 by a Non-GE 59 Water User with ADWR for a new well that is located within the Gila River Impact Zone or within the area three (3) miles outside the exterior boundary of such Impact Zone, ADWR shall notify such Non-GE 59 Water User in writing of: (i) the safe harbor created by this Subparagraph 26.8.2.6.2; and (ii) the fact that to be eligible for such safe harbor, the Non-GE 59 Water User drilling such new well must provide information to the Community and SCIDD relating to the New Large Industrial Use as set forth in a form mutually agreed upon among ADWR, SCIDD and the Community. To be an

February 4, 2003
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eligible Non-GE 59 Water User under this Subparagraph 26.8.2.6.2, a Non-GE 59 Water User must file the form described in the preceding sentence with the Community and SCIDD within sixty (60) days of its receipt of notice from ADWR and the New Large Industrial Use must be limited to no more than the New Large Industrial Use Cap.

26.8.2.7 BHP, San Manuel CC&N, Winkelman CC&N. BHP, AWC and the Town of Winkelman shall each be entitled to the specific safe harbor for water use as set forth below. Each such specific safe harbor shall be the exclusive safe harbor available to each of BHP, AWC and Town of Winkelman and shall be in replacement of and not in addition to any other safe harbor described in Subparagraph 26.8.2.

26.8.2.7.1 BHP may divert up to, but not more than 2,000 AFY including any water Diverted by or on behalf of Arizona Water Company without challenge or objection by the Community, SCIDD and the United States on behalf of each or on behalf of Allottees; provided, however, that BHP may acquire and use additional water within the Impact Zones to the extent that such additional water is acquired in a manner fully consistent with the provisions of Subparagraph 26.8.2.10.6. Whether, and the extent to which, Pumping from wells located outside the exterior boundary of an Impact Zone result in a cone of depression that extends into such Impact Zone and is considered to be Diverting water from within an Impact Zone shall be determined in accordance with the cone of depression test standard that is to be determined by the Gila River Adjudication Court.

26.8.2.7.2 The Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon Arizona Water Company's use of up to, but not more than, one thousand (1,000) AFY of water Diverted from within the Impact Zones for use within the San Manuel CC&N, any or all of which may be Diverted from BHP wells or from wells owned or operated by Arizona Water Company within the San Pedro Impact Zone; provided, however, that Arizona Water Company may acquire and use additional water within the San Manuel CC&N to the extent that such additional water is acquired in a manner fully consistent with the provisions of Subparagraph 26.8.2.10.6. Whether, and the extent to which, Pumping from wells located outside the exterior boundary of an Impact Zone result in a cone of depression that extends into an Impact Zone and is considered to be Diverting water from within an Impact Zone shall be determined in accordance with the cone of depression test standard that is to be determined by the Gila River Adjudication Court.

26.8.2.7.3 The Community, SCIDD and the United States on behalf of each and on behalf of Allottees shall not exercise their respective rights under the Globe Equity Decree to challenge, object to or call upon Winkelman's and/or Arizona Water Company's combined use of up to, but not more than, two hundred fifty (250) AFY of water Diverted from within the Impact Zones for use within Winkelman or the Winkelman CC&N, any or all of which may be Diverted from wells owned or operated by either Winkelman or Arizona Water Company within an Impact Zone; provided, however,

February 4, 2003
Execution copy

that Winkelman or Arizona Water Company may acquire and use additional water within Winkelman or the Winkelman CC&N to the extent that such additional water is acquired in a manner fully consistent with the provisions of Subparagraph 26.8.2.10.6. Whether, and the extent to which, Pumping from wells located outside the exterior boundary of an Impact Zone result in a cone of depression that extends into an Impact Zone and is considered to be Diverting water from within an Impact Zone shall be determined in accordance with the cone of depression test standard that is to be determined by the Gila River Adjudication Court.

26.8.2.8 Water Diverted in Cochise County for an M&I Use or Domestic Purposes.

Notwithstanding any other provision of this Subparagraph 26.8.2, the Community, the District and the United States on behalf of each and on behalf of Allottees shall not exercise their respective rights under the Globe Equity Decree to challenge, object to, or call upon any Non-GE 59 Water Users' use of water Diverted in Cochise County for M&I Use or Domestic Purposes other than for a New Large Industrial Use.

26.8.2.9 Monitoring of safe harbor water uses.

26.8.2.9.1 The Eligible Safe Harbor Acres shall be memorialized by a GIS database. ADWR, the Community, SCIDD and the United States shall agree upon a set of aerial photographs, satellite images, or both, that reflect the Eligible Safe Harbor Acres.

- 26.8.2.9.1.1 Such images will be archived in digital format, and shall be made a permanent part of the court record in the Gila River Adjudication Proceedings upon the Gila River Adjudication Court's approval of the Agreement, which shall be available for review. The Community, SCIDD, the United States and ADWR shall also retain complete copies of the images and the digital GIS database.
- 26.8.2.9.1.2 Beginning on the Enforceability Date, and every five (5) Years thereafter, ADWR shall report to the Gila River Adjudication Court on the status of the use of water Diverted or Pumped from within the Impact Zones. Such report shall include satellite imagery translated into GIS format for comparison to the map previously prepared and attached to the decree. A copy of such report shall be provided to the Community, SCIDD and the United States.
- 26.8.2.10 Miscellaneous.
- 26.8.2.10.1 Any Non-GE 59 Water User that Diverts water from within an Impact Zone for Irrigation Uses, New Domestic Uses or M&I Uses that fails to make the filings required by Subparagraph 26.8.2.3, 26.8.2.4, 26.8.2.5, and 26.8.2.6 to be an eligible Non-GE 59 Water User shall remain subject to the Community's retention of rights under Subparagraph 25.6.1.15.

February 4, 2003
Execution copy

- 26.8.2.10.2 The Diversion or use of water by any Non-GE 59 Water User in a manner that is in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2 in any given Year shall be subject for the duration of such Year to objection, challenge or call by the Community, SCIDD or the United States on behalf of each or on behalf of Allottees, without limitation and without regard to the safe harbor rights set forth in Subparagraph 26.8.2.
- 26.8.2.10.3 Any Non-GE 59 Water User that violates or acts in a manner contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2 on three separate occasions shall thereafter no longer be eligible for any of the safe harbors described in Subparagraph 26.8.2 and shall thereafter be subject to call, challenge or objection by the Community, SCIDD, or the United States on behalf of each or on behalf of Allottees without limitation and without regard to any safe harbors set forth in Subparagraph 26.8.2.
- 26.8.2.10.4 A failure to call by any Party pursuant to any provision of this Agreement, including the safe harbor provisions described in Subparagraph 26.8.2, shall not serve as a defense against any call against any other water user at or upstream of the Ashurst-Hayden Diversion Dam.
- 26.8.2.10.5 The safe harbors set forth in Subparagraph 26.8.2 are subject to the approval by the Gila River Adjudication Court of the stipulation and form of judgment set forth in Exhibit 25.11A. Such stipulation shall include the right of the

February 4, 2003
Execution copy

Community, SCIDD and the United States on behalf of each or on behalf of Allottees to enforce their rights under the Globe Equity Decree in the Gila River Adjudication Court against Non-GE 59 Water Users for actions in violation of or contrary to the terms, conditions, limitations, requirements or provisions of Subparagraph 26.8.2.

26.8.2.10.6 The Community, SCIDD and the United States on behalf of each or on behalf of Allottees shall recognize and be limited by the safe harbors set forth in Subparagraph 26.8.2 as to any person or entity to which any water rights attendant to such safe harbor are transferred pursuant to a severance and transfer or a conversion procedure under State law.

26.8.2.10.7 The Community, SCIDD and the United States on behalf of each or on behalf of Allottees shall not object to the transfer or conversion by an eligible Non-GE 59 Water User, Arizona Water Company (but only in its capacity as provider of water to the San Manuel CC&N and the Winkelman CC&N), BHP or the Town of Winkelman of any water rights attendant to Eligible Safe Harbor Acres to M&I Use or Domestic Purposes; provided, however, that for this Subparagraph to apply, the amount of water transferred or converted shall not exceed the consumptive use of water by crops being irrigated on such Eligible Safe Harbor Acres and the agricultural lands from which the water is transferred must be maintained by the transferee in a manner that prevents growth of Phreatophytes on those lands.

February 4, 2003

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26.8.2.10.8 Emergency use for public safety purposes. The Community, SCIDD and the United States shall not object to the use of water by a Non-GE 59 Water User as required by public authorities to respond to declared emergencies for the safety and protection of the public.

27.0 COMMUNITY FUNDS

27.1 Water OM&R Trust Fund.

27.1.1 Pursuant to Section 208(a) of the Act, there shall be established the Water OM&R Trust Fund.

27.1.2 Pursuant to Section 208(b) of the Act, a sum of fifty-three million dollars (\$53,000,000) shall be deposited into the Water OM&R Trust Fund. The sums required by Section 208(b) of the Act are in addition to those sums made available pursuant to Section 403(f) of the Colorado River Basin Project Act, 43 U.S.C. §1543(f), as amended by Section 107(a) of the Act, for payment of CAP Fixed OM&R Charges.

27.1.3 Pursuant to Section 207(d) of the Act, the Water OM&R Trust Fund principal and any interest or income accruing thereon shall be managed in accordance with the American Indian Trust Fund Management Reform Act of 1994, (25 U.S.C. § 4001, *et seq.*) 108 Stat. 4239.

27.1.4 The Water OM&R Trust Fund shall be used to defray OM&R costs associated with the delivery of CAP water for Community purposes.

February 4, 2003

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27.2 Community Water Monitoring Program. To assist the Community in the establishment of the Water quality monitoring program necessary to protect the Community from Injuries to Water Quality arising after the Enforceability Date, the Community shall be paid, through a congressionally approved grant under Section 104(b)(3) of the Clean Water Act, 33 U.S.C. § 1254(b)(3), an amount equal to three million four hundred thousand dollars (\$3,400,000), no later than three (3) years following the date of the enactment of the Act. This money shall be in addition to any other funds the Community will receive pursuant to the terms of this Agreement or the Act.

27.3 SCIP Rehabilitation Funds. Pursuant to Section 203(d)(3) of the Act, the Community shall receive the funding necessary for its portion of the rehabilitation of SCIP from the funds made available to the Secretary pursuant to Section 107(a) of the Act.

27.4 If the State legislature deems it appropriate, the State shall make a contribution to this settlement that is appropriate and commensurate with federal law and policy and prior Indian water settlements as determined by the State legislature.

27.5 No Per Capita Distributions. Neither the Federal funds authorized in the Act nor any State contribution pursuant to Subparagraph 27.4 shall be distributed to any Member on a per capita basis.

February 4, 2003

Execution copy

28.0 CONFIRMATION OF RIGHTS

28.1 Status of Community's Claims.

28.1.1 The Parties, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid, and shall not object to, dispute, or challenge in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights of the Community, Members, Allottees, and the United States to water or to the use of water, as described in this Agreement and in the Act.

28.1.2 Except as provided in Subparagraph 28.1.4, the Community and the United States shall neither challenge nor object to claims for use of water from the Salt, Verde, Santa Cruz and Agua Fria rivers, and their tributaries.

28.1.3 Except as provided in Subparagraphs 6.2, 25.6, 28.1.4 and 29.8, and subject to Subparagraph 28.1.3.1, the Community and the United States shall neither challenge nor object to claims for use of water from the Gila River or its tributaries; provided, however, that the Community and the United States reserve and retain the right to challenge or object to any claim for use of water from the Gila River or its tributaries that includes both: (1) a priority date of 1924 or earlier, and (2) a point of Diversion at or downstream from the Diversions into the Gila Bend Canal and the Enterprise Canal.

February 4, 2003

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28.1.3.1 Notwithstanding the Community's retention of its right to challenge or object to any claim for use of water from the Gila River or its tributaries set forth in Subparagraph 28.1.3, the Community and the United States shall neither challenge nor object to claims for use of water from the Gila River or its tributaries by the Gillespie Diverters.

28.1.4 The Community and the United States reserve and retain the right to challenge or object to any claim for use of water by or on behalf of the following persons or entities:

28.1.4.1 The White Mountain Apache Tribe of the Fort Apache Reservation, Arizona;

28.1.4.2 The Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona;

28.1.4.3 The Tonto Apache Tribe of Arizona;

28.1.4.4 The San Carlos Apache Tribe of the San Carlos Reservation, Arizona for: (1) all claims except claims on the Salt River, and (2) claims on the Salt River unless such Tribe agrees not to object to the rights of the Community and the United States under this Agreement;

February 4, 2003

Execution copy

28.1.4.5 The Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona, unless such Tribe agrees not to object to the rights of the Community and of the United States under this Agreement;

28.1.4.6 The Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona, unless such Tribe agrees not to object to the rights of the Community and of the United States under this Agreement; and

28.1.4.7 The Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona, unless such Tribe agrees not to object to the rights of the Community and of the United States under this Agreement.

28.1.5 Nothing in Subparagraph 28.1 in any way restricts or limits the rights of the Community or the United States set forth in Subparagraphs 6.2, 25.6, or 29.8.

28.2 SRP Rights.

28.2.1 All of the Parties to this Agreement, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication Proceedings, or in any other judicial or administrative

February 4, 2003

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proceeding, the rights of SRP and its shareholders to the waters of the Salt and Verde rivers, which rights are appurtenant to the lands of SRP and its shareholders, and are described, stated, confirmed or established in the following documents:

28.2.1.1 Notices of Appropriation of Water posted and subsequently recorded by the Hudson Reservoir and Canal Company on April 22, 1893, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records No. 1 at Pages 478 to 480; on April 25, 1893, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at Pages 283-285; on April 29, 1893, with the Yuma County, Arizona, Recorder's Office in Book of Homestead and Pre-emption Claims No. 1 at Pages 76-78; on May 1, 1893, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 1 at Pages 8-13; on August 26, 1893, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 1 at Pages 310-312; on August 26, 1893, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records, No. 1 at Pages 534-538; on February 1, 1894, with the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 1 at Pages 53-57; on August 30, 1901, with the Gila County, Arizona, Recorder's Office in Book of Miscellaneous Records No. 2 at Pages 292-293; on August 31, 1901, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at Pages 74-76; on August 31, 1901, with the Office of

February 4, 2003
Execution copy

the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 191-195; on August 31, 1901, in the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 239-242; on February 26, 1900, in the Office of the Secretary of the Arizona Territory in Book of Filings and Locations No. 2 at Pages 131-133; on March 3, 1900, in the Office of the Secretary of the Arizona Territory in Book of Water Filings and Locations No. 2 at Pages 154-157.

28.2.1.2 Notice of Appropriation of Water posted and recorded by Frank H. Parker, Secretary of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 155 on February 8, 1906.

28.2.1.3 Notice of Appropriation of Water posted on February 6, 1906 and recorded by Louis C. Hill, Supervising Engineer, United States Geological Survey, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 156 on February 8, 1906.

28.2.1.4 Notice of Appropriation of Water posted on March 4, 1914, and recorded by John P. Orme, President of the Salt River Valley Water Users' Association, with the Maricopa County, Arizona, Recorder's Office in Book of Canals No. 2 at page 379 on March 6, 1914.

- 28.2.1.5 Decision and Decree, and all Decrees supplemental thereto, entered in *Hurley v. Abbott*, in the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Maricopa, No. 4564, March 1, 1910.
- 28.2.1.6 Decision and Decree, and all supplemental Decrees thereto, entered in *Benson v. Allison*, in the Superior Court of Maricopa County, State of Arizona, No. 7589, November 14, 1917, solely as applied to the Northeast $\frac{1}{4}$ of Section 25, Township 1 North, Range 1 East, G&SRB&M.
- 28.2.1.7 Salt River Valley Water Users' Association Articles of Incorporation, as amended, in existence on the Enforceability Date.
- 28.2.1.8 Water right applications approved and accepted by the authority of the Secretary of the Interior for homestead lands under the Reclamation Act and for Lands in Private Ownership and Lands Other than Homesteads under the Reclamation Act between the United States of America, Department of Interior, Bureau of Reclamation and individual shareholders of the Salt River Valley Water Users' Association.

February 4, 2003

Execution copy

- 28.2.1.9 Agreement between the United States of America and the Salt River Valley Water Users' Association, dated June 25, 1904.
- 28.2.1.10 Contract between the United States of America and Salt River Valley Water Users' Association dated September 6, 1917, as amended on July 26, 1922, April 25, 1928, June 30, 1930, November 29, 1930, September 10, 1941, and June 30, 1950.
- 28.2.1.11 Contract between the United States of America and Salt River Valley Water Users' Association, dated June 3, 1935 (Verde River Storage Works).
- 28.2.1.12 Contract between the United States of America and Salt River Valley Water Users' Association, dated November 26, 1935, as amended on October 14, 1936, October 2, 1939, and September 10, 1941 (Construction of Bartlett Dam).
- 28.2.1.13 Contract between Salt River Valley Water Users' Association and Salt River Project Agricultural Improvement and Power District, dated March 22, 1937, as amended on February 28, 1944, and September 12, 1949.

February 4, 2003

Execution copy

28.2.1.14 Agreement between Salt River Valley Water Users' Association, Phelps Dodge Corporation and Defense Plant Corporation, dated March 1, 1944 (Horseshoe Dam Construction and Operation).

28.3 Buckeye Rights.

28.3.1 All of the Parties to this Agreement, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, but not including Phelps Dodge, ratify, confirm, declare to be valid, and agree not to object to, dispute, or challenge in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights of the Buckeye Water Conservation & Drainage District, and the Buckeye Irrigation Company and its shareholders, to the waters of the Salt, Verde and Gila rivers, which rights are appurtenant to lands currently provided with water by the Buckeye Irrigation Company or within Buckeye Water Conservation & Drainage District, and which rights are described, confirmed, or established by virtue of the following documents, decrees and enactments:

28.3.1.1 Notices of location and appropriation of waters of the Gila River posted March 10, 1877, and recorded March 12, 1877, in Book 1 of Canals, page 22, and posted May 28, 1885, and recorded June 3, 1885, in Book 1 of Canals, Page 80, and posted July 24, 1886, and recorded October 8, 1886, in Book 1 of Canals, page 94, in the records of Maricopa County, Arizona.

- 28.3.1.2 The Articles of Incorporation and Bylaws of the Buckeye Irrigation Company, as amended and in effect as of the Enforceability Date.
- 28.3.1.3 The decree of November 14, 1917, and all amendments and supplements thereto, entered in *Benson v. Allison, et al.*, No. 7589 in the Superior Court of Maricopa County, Arizona, as applicable to all lands described therein and now provided with water diverted from the Gila River at the head gate of the Buckeye Canal in Section 28, Twp. 1 N., R. 1 W., G&SRB&M, Maricopa County, Arizona.
- 28.3.1.4 The order of the Board of Supervisors of Maricopa County, Arizona, dated November 6, 1922, creating the Buckeye Water Conservation & Drainage District and including specified lands within the boundaries thereof, and the provisions of Chapter 19, title 48, Arizona Revised Statutes, establishing the rights of lands to waters available for distribution within such District as in effect at the time of the Enforceability Date.
- 28.3.1.5 The stipulations, judgments and decrees made and entered in *Buckeye Irrigation Company v. Salt River Valley Water Users' Association, et al.*, No. 30869-B in the Superior Court of Maricopa County, Arizona, including, but not limited to the judgment in favor of Buckeye

February 4, 2003
Execution copy

Irrigation Company and against Salt River Valley Water Users'

Association entered September 29, 1944.

28.4 Arizona Game and Fish Commission Rights.

28.4.1 The Community and the United States on behalf of the Community confirm that certain Arizona Game and Fish Commission uses of water for wildlife purposes do not adversely affect users on the Reservation and shall not dispute in the Gila River Adjudication Proceedings, or in any other judicial or administrative proceeding, the rights and claims to water described in Exhibit 28.4.1, on the condition that the Arizona Game and Fish Commission does not change the use or sever or transfer these rights and claims. These uses are not subject to call in the event the Community enforces the earlier priority of its rights.

28.4.2 The Community and the United States on behalf of the Community acknowledge that the Arizona Game and Fish Commission has a responsibility to conserve wildlife species and habitat on non-Reservation lands. For the limited purpose of the conservation of wildlife watering facilities, the Community agrees not to object to an application by the Arizona Game and Fish Commission for a special use permit from the United States in any capacity or for a certificate of water rights from the State; provided that (1) the water appropriated for each facility does not exceed one-half (0.5) AFY, and (2) the use of the water does not cause material harm to the Community. The Arizona Game and Fish Commission shall provide not less

February 4, 2003

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than sixty (60) days notice to the Community upon application of any special use

permit or certificate of water rights described in this Subparagraph 28.4.2.

28.5 City of Phoenix Rights.

28.5.1 All of the Parties to this Agreement, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the City of Phoenix in the waters of the Salt and Verde rivers, which rights are described, stated, confirmed or established in the following documents:

- 28.5.1.1 Contract No. 1830 between the United States of America, the City of Phoenix and the Salt River Valley Water Users' Association dated October 7, 1948.
- 28.5.1.2 Contract No. 1604 between the Salt River Valley Water Users' Association and The City of Phoenix dated November 22, 1946, to the extent that Contract No. 1604 is in accordance with and consistent with Contract No. 1830 described in Subparagraph 28.5.1.1.
- 28.5.1.3 Certificate of Water Right No. 1999 from the State of Arizona to the City of Phoenix.

28.6 Plan 6 Bureau of Reclamation Storage and Appropriative Rights.

28.6.1 Modified Roosevelt Dam. All of the Parties to this Agreement, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the United States in the waters of the Salt River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. R-2128 issued by the State of Arizona to the U.S. Bureau of Reclamation.

28.6.2 New Waddell Dam. All of the Parties to this Agreement, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the United States in the waters of the Agua Fria River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. 33-87832 issued by the State of Arizona to the U.S. Bureau of Reclamation.

28.7 Plan 6 State Appropriative Rights.

February 4, 2003

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28.7.1 Modified Roosevelt Dam. All of the Parties to this Agreement, including the United States in all of its capacities except as trustee on behalf of any Indian tribe other than the Community, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge, in the Gila River Adjudication Proceedings, or otherwise, the rights of the cities of Phoenix, Scottsdale, Mesa, Chandler, Glendale and Tempe in the waters of the Salt River, which rights are described, stated, confirmed or established in the following documents:

- 28.7.1.1 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96226 issued by the State of Arizona to the City of Tempe;
- 28.7.1.2 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96227 issued by the State of Arizona to the City of Scottsdale;
- 28.7.1.3 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96228 issued by the State of Arizona to the City of Phoenix;
- 28.7.1.4 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96229 issued by the State of Arizona to the City of Mesa;
- 28.7.1.5 Permit to Appropriate Surface Waters of the State of Arizona No. 33-96230 issued by the State of Arizona to the City of Glendale; and

February 4, 2003

Execution copy

28.7.1.6 Permit to Appropriate Surface Waters of the State of Arizona No. 33-

96231 issued by the State of Arizona to the City of Chandler.

28.7.2 New Waddell Dam. All of the Parties to this Agreement, including the United States in all of its capacities except as trustee on behalf of any Indian tribe other than the Community, ratify, confirm, declare to be valid and agree not to object to, dispute or challenge in the Gila River Adjudication Proceedings, or otherwise, the rights of CAWCD in the waters of the Agua Fria River, which rights are described, stated, confirmed or established in Permit to Appropriate Surface Waters of the State of Arizona No. 33-89719 issued by the State of Arizona to the CAWCD.

28.8 [Intentionally not used].

29.0 OTHER PROVISIONS

29.1 Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of Federal reserved rights, aboriginal claims, or any other Indian claims to water in any judicial or administrative proceeding.

29.2 This Agreement constitutes the entire understanding among the Parties. Evidence of conduct or statements made in the course of negotiating this Agreement, including, but not limited to previous drafts of this Agreement, is inadmissible in any legal proceedings other than one for approval or confirmation of this Agreement.

29.3 No modification of this Agreement shall be effective unless it is in writing, signed by all Parties, and is approved by the Gila River Adjudication Court. Notwithstanding the foregoing, Exhibits to this Agreement may be amended by the parties to such Exhibits in accordance with their terms, without court approval, unless such approval is required in the Exhibit or by law; provided, however, that no amendment of any Exhibit may violate any provisions of the Act, or this Agreement, or adversely affect the rights under this Agreement of any Party who is not a signatory of such an amendment.

29.4 Execution of this Agreement by the Governor of the State constitutes the commitment of the State to carry out the terms and conditions of Subparagraphs 5.3, 8.23, 25.1, 26.8.1, 27.4 and 29.5.1. Except as provided in the preceding sentence, it is not intended that this Agreement shall be determinative of any decision to be made by

any State agency in any administrative, adjudicatory, rule making, or other proceeding or matter. Except as provided in this Agreement, nothing herein shall be construed as a waiver of any rights that the State has as to its natural resources.

29.5 Effective Date.

29.5.1 As of the Effective Date, each Party shall have the obligation to work in good faith to satisfy the conditions set forth in Section 207(d) of the Act. Except as provided in the preceding sentence, no Party, by reason of its execution of this Agreement, shall be required to perform any of the obligations or be entitled to receive any of the benefits under this Agreement until the Enforceability Date.

29.5.2 The Parties recognize that a fully enforceable Arizona Water Settlement Agreement among the United States, acting through the Secretary acting on the behalf of the Department of the Interior, ADWR and CAWCD (“Master Agreement”) is a necessary condition precedent to the Enforceability Date. In order for the Master Agreement to be fully enforceable, certain conditions must be satisfied. Certain of the conditions for MSIDD and CAIDD are set forth in Exhibit 29.5.2, which list is not intended to create or imply conditions or requirements applicable to other parties. The ability of MSIDD and CAIDD to perform their obligations pursuant to this Agreement is contingent upon a final judgment in favor of defendants in the case styled *Smith Family Trust and Pretzer Land and Cattle Co. v. Maricopa Stanfield Irrigation and*

Drainage District and Central Arizona Irrigation and Drainage District, CV 2001-00924.

29.6 By signing this Agreement each person represents that he or she has the authority to execute it.

29.7 All Parties to this Agreement, including the United States in all of its capacities except as trustee for Indian tribes other than the Community, recognize that water uses on the urbanized portions of the lands within SRRD and RWCD have changed and will continue to change from agricultural uses to M&I Uses. The Parties agree that such changes in use are valid, and that water appurtenant to lands that are now or will become urbanized within a particular municipal or other water service area may be delivered for M&I Uses on such urbanized lands and the water rights appurtenant to such urbanized lands shall carry the original priority dates. With the exception of type of use, these water rights are as described in the Kent Decree, the Lehane decision (*W.C. Lehane v. Salt River Valley Water Users' Assoc., et al.*, Cause No. 32021-C) and the documents referred to therein. No Party to this Agreement shall challenge or otherwise object to these rights on the basis of change of use, nature of delivery, or on any other bases in any judicial or administrative proceeding. As to urbanized lands within the SRRD, the Parties agree that the historical practices of the Cities and SRP and the general nature of the rights are appropriately described in the Water Commissioner's Report of June 3, 1977, a copy of which is attached as Exhibit 29.7. Nothing in this Subparagraph 29.7 shall be construed as authorizing the

delivery of water to any municipality by SRP or RWCD for M&I uses within the SRRD or RWCD, respectively, in the absence of a written delivery agreement between any such municipality and SRP or RWCD.

29.8 Any Party shall have the right to petition any court of competent jurisdiction, but not the courts of the Community, for such declaratory and injunctive relief as may be necessary to enforce the terms, conditions, and limitations of this Agreement and monetary relief as provided for in this Agreement. Nothing contained herein waives the right of the United States, the Community, or the UVD Parties to object to the jurisdiction of the courts of the State to adjudicate any dispute arising under this Agreement or the Act. Furthermore, nothing herein waives the right of any Party to object to the jurisdiction of any Federal Court to adjudicate a dispute arising under this Agreement or the Act.

29.9 This Agreement shall be construed in accordance with applicable State and Federal law.

29.10 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

29.11 Several of the sources of water described in Paragraphs 5.0 through 16.0, and 18.0 of this Agreement are dependent upon the existence of conservation, storage and other facilities, including water delivery facilities, to deliver such water to the

Community. The destruction of any of these facilities by any cause shall not permanently extinguish the Community's right to receive water otherwise made available by the affected facility; however, such destruction may relieve the other Parties of the obligation to deliver such water to the Community until the affected facility is repaired or replaced or other suitable facilities have been agreed to by the principal Parties in interest as hereinafter provided. Any Party responsible for repairing or replacing an affected facility under other contractual arrangements shall have that same obligation under this Agreement. In the event no Party has such an obligation, all of the Parties, including the Secretary, shall use all reasonable efforts to provide a permanent equitable substitute source for the affected water supply. The provisions of this Subparagraph 29.11 shall not apply to CAWCD.

29.12 The expenditure or advance of any money or the performance of any obligation by the United States, in any of its capacities, under this Agreement shall be contingent upon appropriation of funds therefor. No liability shall accrue to the United States, in any of its capacities, in the event funds are not appropriated.

29.13 No member of or delegate to Congress or Resident Commissioner shall be admitted to any share of this Agreement or to any benefit that may arise here from. This restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

29.14 The Secretary shall reallocate and execute CAP Subcontracts for the delivery of sixty-five thousand six hundred forty-seven (65,647) acre feet of uncontracted CAP M&I Priority Water to the entities and in the amounts provided in Section 105(b) of the Act.

29.15 Pursuant to Section 104(d) of the Act, the Secretary and CAWCD shall amend the CAP Subcontracts for M&I Uses in accordance with Exhibits 29.15A and 29.15B1 through 4. Such amendments shall provide, at a minimum, that: (1) the CAP Subcontract shall be for permanent service as that term is used in Section 5 of the Boulder Canyon Project Act of 1928, 43 U.S.C. §617d, (2) the CAP Subcontract shall be for a delivery term of one hundred (100) years from the Enforceability Date, and (3) CAP M&I Priority Water shall be distributed among those entities with contracts for the delivery of CAP M&I Priority Water in a manner determined by the Secretary and the CAP Operating Agency in consultation with CAP M&I Priority Water users to fulfill all delivery requests for such water to the greatest extent possible.

29.16 In the event of any ambiguity in calculating the amount of water Diverted by the Community pursuant to Subparagraphs 4.3 and 4.5, or in calculating the amount of water excluded pursuant to Subparagraph 4.4, the Parties' intention is that such ambiguity be resolved so as to avoid counting against the Settlement Water Budget any particular source of water more than once in any given Year.

29.17 Exhibit 29.17 is the form of the Act that, once enacted, will authorize the Federal action required to carry out this Agreement. If the Act, or any amendment thereof that is enacted prior to the Enforceability Date, differs from Exhibit 29.17 in a manner that materially and adversely affects a Party's rights or interests under this Agreement without the written consent of that Party, then that Party shall be relieved of its obligations hereunder.

29.18 Exhibits 26.8.1 and 29.18 set forth the elements of State legislation, that once enacted, will authorize the State action required to carry out the terms of Subparagraphs 5.3, 8.23 and 26.8.1. If the State legislation, or any amendment thereof that is enacted prior to the Enforceability Date, differs from Exhibits 26.8.1 and 29.18 in a manner that materially and adversely affects a Party's rights or interests under this Agreement without the written consent of that Party, then that Party shall be relieved of its obligations hereunder.

29.19 This Agreement may be executed in duplicate originals, each of which shall constitute an original Agreement.

29.20 No part of this Agreement should be construed, in whole or in part, as providing consent by any of the non-Indian Parties to the legislative, executive or judicial jurisdiction or authority of the Community in connection with activities, rights, or duties contemplated by the Agreement and conducted by any of those Parties outside the exterior boundaries of the Reservation. This Agreement should not

be construed as a commercial dealing, contract, lease or other arrangement that creates a consensual relationship between any non-Indian Party and the Community so as to provide a basis for the Community's legislative, executive or judicial jurisdiction or authority over the non-Indian Parties to this Agreement under *Montana v. United States*, 450 U.S. 544 (1981) for activities conducted outside the exterior boundaries of the Reservation. The activities, rights or duties conducted or undertaken by the non-Indian parties pursuant to the Agreement outside the exterior boundaries of the Reservation shall not be construed as conduct that threatens or affects the political integrity, economic security or health and welfare of the Community so as to provide a basis for the exercise of the Community's legislative, executive or judicial jurisdiction or authority over the non-Indian Parties to this Agreement under *Montana v. United States* 450 U.S. 544 (1981). Benefits and rights accruing to the non-Indian Parties to this Agreement are provided as consideration for benefits and rights accruing to the Community, and shall not be construed as privileges, benefits, tribal services or other advantages of civilized society provided by the Community that would justify the imposition of the Community's legislative, executive or judicial authority over those Parties in regard to the activities, rights and duties conducted outside the exterior boundaries of the Reservation. The enactment of legislation authorizing or ratifying this Agreement shall not be construed as a congressional delegation of authority to the Community of legislative, executive or judicial jurisdiction or authority over the non-Indian Parties hereto.

29.21 Pursuant to Section 213(a) of the Act, the Secretary, acting through the Bureau of Reclamation, shall repair, rehabilitate and remediate the Subsidence Damages that have occurred as set forth in Exhibit 29.21.

29.22 Nothing in this Agreement shall be construed to quantify or otherwise affect the Water Rights, claims or entitlements to Water of any tribe, band or community other than the Community.

29.23 All notices required to be given hereunder shall be in writing and may be given in person, by facsimile transmission, or by United States mail postage prepaid, and shall become effective at the earliest of actual receipt by the Party to whom notice is given, when delivered to the designated address of the Party, or if mailed, forty-eight (48) hours after deposit in the United States mail addressed as shown below or to such other address as such Party may from time to time designate in writing.

As to the United States of America:

Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

Regional Director
Bureau of Indian Affairs
Western Regional Office
P.O. Box 10
Phoenix, Arizona 85001

Regional Director

Bureau of Reclamation
Lower Colorado Region
P.O. Box 427
Boulder City, Nevada 89005

As to the State of Arizona:

Office of the Governor
1700 West Washington Street
Phoenix, Arizona 85007

Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004
Attn: Director

Arizona Game and Fish Commission
2221 W. Greenway Road
Phoenix, Arizona 85023-4399
Attn: Chairman

As to the Gila River Indian Community:

Office of the Governor
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

Office of the General Counsel
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

As to the Salt River Project Agricultural Improvement and Power District:

Salt River Project
Agricultural Improvement and Power District
P.O. Box 52025
Phoenix, Arizona 85072-2025
Attn: General Manager

As to the Salt River Valley Water Users' Association

Salt River Valley Water Users' Association
P.O. Box 52025
Phoenix, Arizona 85072-2025
Attn: General Manager

As to the Roosevelt Irrigation District:

Roosevelt Irrigation District
103 West Baseline Road
Buckeye, Arizona 85326
Attn: Superintendent

As to the Arizona Water Company:

Arizona Water Company
P.O. Box 29006
Phoenix, Arizona 85038-9006
Attn: President

As to the City of Casa Grande:

City of Casa Grande
510 East Florence Boulevard
Casa Grande, Arizona 85222
Attn: City Manager

As to the City of Chandler:

City of Chandler
Mail Stop 605
P.O. Box 4008
Chandler, Arizona 85244-4008
Attn: City Manager

As to the City of Coolidge:

City of Coolidge
P.O. Box 1498
Coolidge, Arizona 85228

Attn: City Manager

As to the City of Glendale:

City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301
Attn: City Manager

As to the City of Goodyear:

City of Goodyear
119 N. Litchfield Rd.
Goodyear, Arizona 85338
Attn: City Manager

As to the City of Mesa:

City of Mesa
20 E. Main, Suite 750
Mesa, Arizona 85201
Attn: City Manager

As to the City of Peoria:

City of Peoria
8401 West Monroe
Peoria, Arizona 85345
Attn: City Manager

As to the City of Phoenix:

City of Phoenix
200 West Washington, Suite 1200
Phoenix, Arizona 85003-1611
Attn: City Manager

As to the City of Safford:

City of Safford

P.O. Box 272
Safford, Arizona 85548-0272
Attn: City Manager

As to the City of Scottsdale:

City of Scottsdale
3939 Drinkwater Blvd.
Scottsdale, Arizona 85251
Attn: City Manager

As to the City of Tempe:

City of Tempe
31 East 5th Street
Tempe, Arizona 85281
Attn: City Manager

As to the Town of Florence:

Town of Florence
P.O. Box 2670
Florence, Arizona 85232
Attn: Town Manager

As to the Town of Mammoth:

Town of Mammoth
P.O. Box 130
Mammoth, Arizona 85618
Attn: Town Manager

As to the Town of Kearny:

Town of Kearny
501 Veterans Avenue
Kearny, Arizona 85237
Attn: Town Manager

As to the Town of Duncan:

Town of Duncan
526 High Street

Duncan, Arizona 85534
Attn: Town Manager

As to the Town of Gilbert:

Town of Gilbert
1025 South Gilbert Road
Gilbert, Arizona 85296
Attn: Town Manager

As to the Maricopa-Stanfield Irrigation and Drainage District:

Maricopa-Stanfield Irrigation and Drainage District
41630 W. Louis Johnson Dr.
Maricopa, Arizona 85239
Attn: General Manager

As to the Central Arizona Irrigation and Drainage District:

Central Arizona Irrigation and Drainage District
231 N. Sunshine Blvd.
Eloy, Arizona 85231
Attn: General Manager

As to the San Carlos Irrigation and Drainage District:

San Carlos Irrigation and
Drainage District
P.O. Box 218
Coolidge, Arizona 85228
Attn: General Manager

As to the Hohokam Irrigation and Drainage District:

Hohokam Irrigation District
142 Arizona Blvd.
Coolidge, Arizona 85228
Attn: General Manager

As to the Arlington Canal Company

Arlington Canal Company

P.O. Box 298
Arlington, Arizona 85322
Attn: Manager

As to the Buckeye Irrigation Company:

Buckeye Irrigation Company
P.O. Box 1726
Buckeye, Arizona 85236
Attn: General Manager

As to the Buckeye Water Conservation and Drainage District:

Buckeye Water Conservation and Drainage District
P.O. Box 1726
Buckeye, Arizona 85236
Attn: General Manager

As to the Franklin Irrigation District:

Franklin Irrigation District
Rt. 1 Box 51
Duncan, Arizona 85514
Attn: General Manager

As to the Gila Valley Irrigation District:

Gila Valley Irrigation District
207 Fifth Street
Safford, Arizona 85546
Attn: General Manager

As to the CAWCD:

Central Arizona Water Conservation District
23636 North Seventh Street
Phoenix, Arizona 85024
Attn: General Manager

As to the Phelps Dodge Corporation:

Phelps Dodge Corporation
Land and Water Resources Dept.
2600 North Central Avenue
Phoenix, Arizona 85004-3014
Attn: Senior Counsel – Director of Land and Water Resources

or addressed to such other address as the Party to receive such notice shall have
designated by written notice given as required by Paragraph 29.23.

30.0 EXECUTION BLOCKS

IN WITNESS WHEREOF, the Parties have executed this Agreement dated as of the
day and year first above written.

THE UNITED STATES OF AMERICA

By: _____

Dated: _____

Secretary of the Interior

THE STATE OF ARIZONA

By: _____

Dated: _____

Governor

Attest: _____

Secretary of State

GILA RIVER INDIAN COMMUNITY

By: Richard P. Nantz

Dated: _____

Governor

Attest: James J. Stewart

Approved as
To Form: W. J. R. Lewis
General Counsel

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By: _____

Dated: _____

President

Attest and Countersigned: _____

Secretary

Approved as

To Form: _____

Attorney

ROOSEVELT IRRIGATION DISTRICT

By: _____

Dated: _____

President

Attest: _____

Secretary

Approved as

To Form: _____

General Counsel

CITY OF CASA GRANDE

By: _____

Dated _____

Mayor

Attest: _____

City Clerk

Approved as

To Form: _____

City Attorney

CITY OF COOLIDGE

By: _____

Dated: _____

City Manager

Attest: _____

City Clerk

Approved as

To Form: _____

City Attorney

CITY OF GOODYEAR

By: _____

Dated: _____

City Manager

Attest: _____

City Clerk

Approved as

To Form: _____

City Attorney

CITY OF PEORIA

By: _____

Dated: _____

City Manager

Attest: _____

City Clerk

Approved as _____

To Form: _____

City Attorney

CITY OF SAFFORD

By: _____

Dated: _____

City Manager

Attest: _____

City Clerk

Approved as

To Form: _____

City Attorney

CITY OF TEMPE

By: _____

Dated: _____

Mayor

Attest: _____

City Clerk

Approved as

To Form: _____

City Attorney

TOWN OF MAMMOTH

By: _____

Dated: _____

Town Manager

Attest: _____

Town Clerk

Approved as

To Form: _____

Town Attorney

TOWN OF DUNCAN

By: _____

Dated: _____

Town Manager

Attest: _____

Town Clerk

Approved as

To Form: _____

Town Attorney

MARICOPA-STANFIELD IRRIGATION

AND DRAINAGE DISTRICT

By: _____

Dated: _____

President

Attest: _____

Secretary

Approved as

To Form: _____

District's Attorney

SAN CARLOS IRRIGATION
AND DRAINAGE DISTRICT

By: _____

Dated: _____

President

Attest: _____

Secretary

Approved as

To Form: _____

District's Attorney

HOHOKAM IRRIGATION AND DRAINAGE DISTRICT

By: _____

Dated: _____

President

Attest: _____

Secretary

Approved as

To Form: _____

District's Attorney

BUCKEYE WATER CONSERVATION
AND DRAINAGE DISTRICT

By: _____

Dated: _____

President

Attest: _____

Secretary

Approved as

To Form: _____

General Counsel

GILA VALLEY IRRIGATION DISTRICT

By: _____

Dated: _____

President

Attest: _____

Secretary

Approved as

To Form: _____

General Counsel

PHELPS DODGE CORPORATION

By: _____

Dated: _____

President

Attest: _____

Secretary

Approved as

To Form: _____

[Title]

EXHIBIT 17.1D

**LEASE AGREEMENT FOR CAP WATER AMONG THE CITY OF SCOTTSDALE
THE GILA RIVER INDIAN COMMUNITY AND THE
UNITED STATES, AS TRUSTEE FOR THE
GILA RIVER INDIAN COMMUNITY**

1. **PREAMBLE**

This agreement providing for the lease of Central Arizona Project water ("Lease Agreement"), made this ____ day of _____, 200__, is among the United States of America (hereinafter "United States"), the Gila River Indian Community (hereinafter "Community") and the City of Scottsdale, Arizona (hereinafter "City").

2. **RECITALS**

2.1 The parties to this Lease Agreement are also parties to the Settlement Agreement as defined under Subparagraph 3.21 herein.

2.2 As partial consideration for entering into the Settlement Agreement, the Community and the City are entering into this Lease Agreement by which the Community will lease to the City a portion of the Community's CAP Indian Priority Water to which the Community is entitled pursuant to the Community's CAP Water Delivery Contract. The parties acknowledge that the consideration received by the Community in exchange for the Leased Water represents fair market value.

2.3 By the Arizona Water Settlements Act (the "Act"), the United States confirmed the Settlement Agreement and specifically provided for an amendment to the Community's CAP Water Delivery Contract authorizing the Community to lease Community CAP Water.

2.3.1 The Community's CAP Water Delivery Contract, which authorizes the Community to

enter into this Lease Agreement, is attached to the Settlement Agreement as exhibit 8.2.

3.0 DEFINITIONS

3.1 "CAP" or "Central Arizona Project" shall mean that reclamation project constructed by the United States of America pursuant to Title III of the Colorado River Basin Project Act of September 30, 1968, 82 Stat. 885, as amended.

3.2 "CAP Contractors" shall mean any Indian entity which enters into a water service contract with the United States that extends to the year 2043 or beyond and which is at least ten years in length in furtherance of the provisions of the Basin Project Act.

3.3 "CAP Master Repayment Contract" shall mean the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1), and any amendment or revision thereto.

3.4 "CAP Subcontractors" shall mean any irrigation district, municipality, individual, or any other entity which enters into a water service subcontract with the United States and the Operating Agency that extends to the year 2043 or beyond and which is at least ten years in length in furtherance of the provisions of the Basin Project Act.

3.5 "CAWCD" shall mean the Central Arizona Water Conservation District, a political subdivision of the State and a tax-levying public improvement district organized under the laws of the State, or its successor, which is the contractor under the CAP Master Repayment Contract.

3.6 "CAP Service Area" or "District" shall mean the area included within the Central Arizona Water Conservation District, consisting of Maricopa, Pinal and Pima Counties, as well as any other counties, or portions thereof, that may hereafter become part of the District.

3.7 “Cities” shall mean the cities of Chandler, Glendale, Scottsdale, Mesa, Scottsdale, Scottsdale and Scottsdale.

3.8 “City” shall mean the City of Scottsdale, an Arizona Municipal Corporation, its predecessors, successors and assigns.

3.9 “Community CAP Water” or “Community’s CAP Water” shall mean water to which the Community is entitled pursuant to the Community’s CAP Water Delivery Contract.

3.10 “Community’s CAP Water Delivery Contract” shall mean Contract No. 3-07-30-W0284 between the Community and the United States dated October 22, 1992, as amended.

3.11 “CPI-U” shall mean the All Items Consumer Price Index All Urban Consumers, U.S. City Average (1982-84 = 100), which is published by the U.S. Department of Labor, Bureau of Labor Statistics.

3.12 “Enforceability Date of the Settlement Agreement” shall mean the Enforceability Date as that term is defined in the Settlement Agreement.

3.13 “Gila River Adjudication Proceedings” shall mean that action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled *In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W-1 (Salt), W-2 (Verde), W-3 (Upper Gila), W-4 (San Pedro) (Consolidated)*.

3.14 “Gila River Indian Community” or “the Community” shall mean the sovereign nation, composed of members of the Pima Tribe and the Maricopa Tribe, which is organized under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), and which was originally recognized by the Secretary as the Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation and has subsequently been recognized by the Secretary as the Gila River

Indian Community of the Gila River Indian Reservation

3.15 “Gila River Indian Reservation” or “Reservation” shall mean, for purposes of this Agreement, those lands located within the exterior borders of the reservation created pursuant to the Act of February 28, 1859, and modified by the executive orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915, but not those lands located in Sections 16 and 36, Township 4 South, Range 4 East, Salt and Gila River Base and Meridian.

3.16 “Leased Water” shall mean that portion of the Community’s CAP Indian Priority Water that is leased by the Community to the City pursuant to this Lease Agreement.

3.17 “OM&R” shall mean the care, operation, maintenance, and replacement of the Transferred Works or any part thereof.

3.18 “Operating Agency” shall mean the entity or entities authorized to assume OM&R responsibility of all or any part of the Transferred Works and approved for that purpose by the Secretary or his designee acting in his behalf. CAWCD is the Operating Agency at the time of execution of this Lease Agreement.

3.19 “Other Cities” shall mean the cities of Chandler, Glendale, Scottsdale, Mesa, Scottsdale, Scottsdale and Scottsdale, except for the City defined in Subparagraph 3.8.

3.20 “Secretary” shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.

3.21 “Settlement Agreement” shall mean that agreement entered into among and between the Cities, the Community and the United States, and other parties to that agreement settling specified water rights claims raised by the parties in the Gila River Adjudication Proceedings. This Lease

Agreement constitutes exhibit 17.1.D to the Settlement Agreement.

3.22 “Subparagraph” shall mean a subparagraph of this Lease Agreement.

3.23 “Transferred Works” shall mean such facilities of the CAP water supply system or of other construction stages as to which OM&R responsibility is transferred from the United States to the Operating Agency.

3.24 “United States” shall mean the United States of America on its own behalf and capacity as well as acting in its Federal capacity as trustee for the Community and of the Reservation and in all other capacities necessary to effectuate the terms of this Lease Agreement.

3.25 “Water Lease Charge” shall be that amount of money paid to the Community for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this and other pertinent agreements, it is agreed as follows:

4.0 LEASE OF WATER

4.1 Subject of Lease. The Community hereby leases to the City of Scottsdale twelve thousand (12,000) acre-feet per year of Leased Water subject to the terms and conditions of the Community’s CAP Water Delivery Contract except as agreed to herein. The City shall not be subject to amendments to the Community’s CAP Water Delivery Contract adversely affecting this Lease Agreement unless it agrees to such amended terms in writing.

4.2 Term of Lease Agreement. The term of this Lease Agreement shall begin on January 1, 2005, and end December 31, 2104; provided, however, if the Enforceability Date of the Settlement Agreement occurs after January 1, 2005, then the term shall begin on the Enforceability Date of the

Settlement Agreement and end 100 years thereafter. At its sole discretion the Community may enter into a separate lease agreement with the City for Community CAP Water upon such terms and conditions as may be negotiated at that time either during the term of this Lease Agreement or thereafter, provided however, that the term of any such separate lease shall not exceed one hundred (100) years.

4.3 City's Consideration During Initial Term of Lease Agreement.

4.3.1 In consideration for the Leased Water during the term of the Lease Agreement, the City shall pay to the Community the one-time Water Lease Charge which is equal to the result obtained by multiplying the ratio (determined by dividing the CPI-U published for the month in which the term begins by the CPI-U of 137.9 (as published for the month of December, 1991)) ("ratio") by the base payment of One Thousand Two Hundred Three Dollars (\$1,203) ("base payment"), and multiplying that product by twelve thousand (12,000) acre-feet ("AF"). An example showing the manner in which the adjustment required by this Subsection 4.3.1 shall be made, and the manner in which the total consideration shall be calculated, is as follows:

Assuming, solely for purposes of this example, that the amount of water leased is 1,000 acre-feet per year and that the CPI-U index published for the month in which the date of initial payment of this Lease occurs is 207 ("current period").

Calculation (all numbers rounded to the nearest hundredth):

CPI-U for the month that the term begins	207
CPI-U as of December 1991	137.9
Ratio equals (207 divided by 137.9)	1.50
Base payment equals	\$1,203

Product equals (1.5 x \$1,203)	\$1804.50
Water Lease Charge equals (\$1,804.5 x 1,000 AF)	\$1,804,500

In the event the CPI-U index is discontinued or not otherwise available as of the month in which the term begins, the Parties shall select a comparable index.

4.3.2 The City may, at its election, pay the Water Lease Charge in full (without interest) within thirty (30) days after the date that the term begins. In lieu of making such payment, the City may elect to make payment in either of the following ways:

4.3.2.1 An initial payment of \$_____ (1/2 of the total amount due) within thirty (30) days after the date that the term begins, with four (4) annual payments, payable on the next four (4) anniversary dates of the date that the term begins. Each such payment shall be \$_____ (1/8 of the Water Lease Charge) plus interest on the unpaid balance at an annual rate determined as follows: one percent (1%) over the net interest rate paid by the City of Scottsdale on its Water Renewal Refunding Bonds, Series _____, determined as of the date that the term begins. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.1 shall be made, is as follows:

Assume, solely for purposes of this example, that the Water Lease Charge is \$1,000,000 and the net interest rate paid by the City of Scottsdale on its Water Renewal Refunding Bonds, Series _____ on the date that the term begins is five percent (5%). Under this example, the applicable resulting interest rate would be six percent (6%) [5% + 1% = 6%] and payments including interest under this Subparagraph A would be calculated as follows: The City would make an initial payment of \$500,000. The first annual installment would be in the principal amount

of $[\$1,000,000 \times 1/8 = \$125,000]$ plus interest on the unpaid balance of $[\$1,000,000 - \$500,000 = \$500,000]$ in the amount of $[\$500,000 \times .06 = \$30,000]$, for a total payment of $[\$125,000 + \$30,000 = \$155,000]$. The second annual installment would be in the principal amount of $[\$125,000]$ plus interest on the unpaid balance of $[\$1,000,000 - \$625,000 = \$375,000]$ in the amount of $[\$375,000 \times .06 = \$22,500]$, for a total payment of $[\$125,000 + \$22,500 = \$147,500]$. The third annual installment would be in the principal amount of $[\$125,000]$ plus interest on the unpaid balance of $[\$1,000,000 - \$750,000 = \$250,000]$ in the amount of $[\$250,000 \times .06 = \$15,000]$, for a total payment of $[\$125,000 + \$15,000 = \$140,000]$. The fourth and final annual installment would be in the principal amount of $[\$125,000]$ plus interest on the unpaid balance of $[\$1,000,000 - \$875,000 = \$125,000]$ in the amount of $[\$125,000 \times .06 = \$7,500]$, for a total payment of $[\$125,000 + 7,500 = \$132,500]$.

4.3.2.2 An initial payment of \$_____ (1/15 of the Water Lease Charge) within thirty (30) days after the term begins, with fourteen (14) annual payments payable on the next fourteen (14) anniversary dates of the date that the term begins. Each such payment shall be \$_____, plus interest on the unpaid balance at an annual rate of one percent (1%) over the Bank One Home Office prime rate determined as of the date that the term begins. Interest accrued shall not be added to principal and shall not itself bear interest unless delinquent. An example showing the manner in which the payment contemplated by this Subparagraph 4.3.2.2 shall be made, is as follows:

Assume, solely for purposes of this example, that the Water Lease Charge is \$1,000,000 and that the Bank One (or its successor in interest) prime rate on the

date that the term begins is seven percent (7%). Under this example, the applicable resulting interest rate would be eight percent (8%) $[7\% + 1\% = 8\%]$ and the payments including interest under this Subparagraph B would be calculated as follows: The City would make an initial payment of \$66,666.67 $[\$1,000,000 \times 1/15 = \$66,666.67]$. The first annual installment would be in the principal amount of $[\$1,000,000 \times 1/15 = \$66,666.67]$ plus interest on the unpaid balance of $[\$1,000,000 - \$66,666.67 = \$933,333.33]$ in the amount of $[\$933,333.33 \times .08 = \$74,666.67]$, for a total payment of $[\$66,666.67 + \$74,666.67 = \$141,333.34]$. The second annual installment would be in the principal amount of $[\$66,666.67]$ plus interest on the unpaid balance of $[\$1,000,000 - \$133,333.34 = \$866,666.66]$ in the amount of $[\$866,666.66 \times .08 = \$69,333.33]$, for a total payment of $[\$66,666.67 + \$69,333.33 = \$136,000.00]$. The third annual installment would be in the principal amount of $[\$66,666.67]$ plus interest on the unpaid balance of $[\$1,000,000 - \$200,000.01 = \$799,999.99]$ in the amount of $[\$799,999.99 \times .08 = \$64,000.00]$, for a total payment of $[\$66,666.67 + \$64,000.00 = \$130,666.67]$.

The calculations and annual installments continue until the water lease charge and all interest due has been paid in full.

4.3.3 Under either of the payment options set forth in Subparagraphs 4.3.2.1 and 4.3.2.2, without any prepayment penalty, the City may at any time elect to pay the remaining balance in full together with interest on the unpaid balance to the date of such payment.

4.4 OM&R Costs. The City shall pay OM&R costs for the delivery of the Leased Water to the Operating Agency upon the same terms and conditions as are mandated by Article 5.1 of the

City's CAP M&I Water Service Subcontract No. 5-07-30-W0063, as amended, except that the City's obligation to pay such OM&R costs shall not begin earlier than the date that the City is entitled to receive water under this Lease Agreement, but in no event unless and until the water is scheduled for delivery by the City. Prior to the date that the term of this Lease Agreement (as described in Subparagraph 4.2) begins, the Community may use the Leased Water in accordance with the Community's CAP Water Delivery Contract.

4.5 Other Charges or Payments. The City shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Leased Water other than as provided in Subparagraphs 4.3, 4.4, and 4.12, and Paragraph 6.0 of this Lease Agreement.

4.6 Delivery of Water. The United States or the Operating Agency shall deliver the Community's Leased Water to the City as further provided herein; however, neither the United States nor the Operating Agency shall be obligated to make such deliveries if, in the judgment of the Operating Agency or the Secretary, delivery or schedule of deliveries to the City would limit deliveries of CAP water to any CAP Contractor, including the Community, or CAP Subcontractor to a degree greater than would direct deliveries to the Community. The United States or the Operating Agency shall deliver the Leased Water to the City in accordance with water delivery schedules provided by the City to the United States and the Operating Agency and the Operating Agency shall inform the Community of the amount of Leased Water delivered in the previous year. The water ordering procedures contained in Article 4.4 of the City's CAP M&I Water Service Subcontract (or any replacement subcontracts) shall apply to the City's ordering of water under this Lease Agreement. In no event shall the United States or the Operating Agency be required to deliver to the City under this Lease Agreement, in any one month a total amount of Leased Water greater than eleven percent (11%) of the City's annual maximum

entitlement under this Lease Agreement; provided, however, that the United States or the Operating Agency may deliver a greater percentage in any month if such increased delivery is compatible with the overall delivery of CAP water to all CAP Contractors and CAP Subcontractors, as determined by the United States and the Operating Agency if the City agrees to accept such increased deliveries.

4.6.1 Delivery of Water During Times of Shortages. Unless otherwise agreed to in writing, if a time of shortage exists, as described at Subparagraphs 8.16.1.1 and 8.16.1.2 of the Settlement Agreement, the amount of Leased Water available to a City under its Lease Agreement shall be reduced by the same percentage by which water available for delivery as CAP M&I Priority Water is reduced in that Year in accordance with Subparagraphs 8.16.2.1 and 8.16.2.2 of the Settlement Agreement.

4.7 Use of Leased Water Outside Reservation. The City may use or deliver Leased Water for use outside the boundaries of the Reservation, but may not use, lease, transfer the use of, or otherwise cause the Leased Water to be delivered for use outside of the boundaries of the CAP Service Area, except for use within the City's water service area when the City's water service area extends beyond the CAP Service Area.

4.8 Conditions Relating to Delivery and Use. The City shall have the right to use Leased Water for any purpose that is consistent with Arizona law and not expressly prohibited by this Lease Agreement, including groundwater recharge as that term is defined in Contract No. 14-06-W-245 between the United States and CAWCD dated December 15, 1972, as amended on December 1, 1988, hereinafter referred to as the "Repayment Contract." Except to the extent that this Lease Agreement conflicts with the terms of the City's M&I Water Service Subcontract, deliveries of Leased Water to the City and its use by the City shall be subject to the Conditions Relating to Delivery and Use

in Article 4.3 of the City's CAP M&I Water Service Subcontract. During the term of this Lease Agreement, the following subarticles or articles of the City's CAP M&I Water Service Subcontract shall apply to the City and to the City's use of water under this Lease Agreement: Subarticles 4.5(c), 4.5(d), and 5.2(f); Articles 4.6, 4.9, 5.3, 5.4, 5.5, 6.4, 6.6, 6.9, 6.10, 6.11, and 6.13. The City expressly approves and agrees to all the terms presently set out in the Repayment Contract, or as such terms may be hereafter amended, and agrees to be bound by the actions to be taken and the determinations to be made under that Repayment Contract, to the extent not inconsistent with the express provisions of this Lease Agreement.

4.9 Quality of Water. The operation and maintenance of Transferred Works shall be performed in such manner as is practicable to maintain the quality of water made available through such facilities at the highest level reasonably attainable as determined by the Secretary. Neither the United States, the Community, nor the Operating Agency warrants the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water. The City waives its right to make a claim against the United States, the Operating Agency, the Community, other lessee(s), or CAP Subcontractor(s) because of changes in water quality caused by the commingling of Leased Water with other water.

4.10 Points of Delivery. The Leased Water to be delivered to the City pursuant to the provisions of this Lease Agreement shall be delivered at turnouts on the CAP water delivery system or such other points that may be agreed upon by the City, the United States and the Operating Agency.

4.11 Community's Covenants. The Community agrees:

(A) To observe and perform all obligations imposed on the Community by the Community's CAP Water Delivery Contract which are not assumed by the City so that the City's rights

and duties are not in any way impaired;

(B) Not to execute any other lease of the Community's CAP Water that would impair the City's rights and duties hereunder;

(C) Not to alter or modify the terms of the Community's CAP Water Delivery Contract in such a way as to impair the City's rights hereunder or exercise any right or action permitted by the Community's CAP Water Delivery Contract so as to interfere with or change the rights and obligations of the City hereunder; and

(D) Not to terminate or cancel the Community's CAP Water Delivery Contract or transfer, convey or permit a transfer or conveyance of the Contract so as to cause a termination of, interference with, or modification of the rights and obligations of the Community under the Community's CAP Water Delivery Contract.

4.12 Assignment of Interest in Leased Water.

(A) General. The City may not transfer, assign, sublease or otherwise designate or authorize for the use of others all or any part of the Leased Water without the written approval of the Community and the Secretary.

(B) Assignment to the Cities. Notwithstanding the prohibition of Subparagraph 4.12(A) above, approval is hereby granted by the Secretary and the Community to the City if the City is not in default of its payment obligations to the Community to assign all or any part of its interest in Leased Water under this Lease Agreement to one or more of the Other Cities, or to their successor(s) in interest within the boundaries of their existing or future service areas. Before assigning any part of its interest in Leased Water under this Lease Agreement, the City shall offer such interest to all the Other Cities in equal shares. In the event that any of the Other Cities elects not to take its share of the City's

assignment, the water shall then be offered to all of the Other Cities in equal shares until the full amount of the water is so assigned. Such assignment shall be effective only upon the execution, by the assignor City and the assignee of a Voluntary Assignment and Assumption Agreement, the form of which is attached to this Lease Agreement as Exhibit 4.12 (exhibit 17.1.1A of the Settlement Agreement). A copy of such Voluntary Assignment and Assumption Agreement shall be provided to the Operating Agency, the Community and the United States.

(C) Recovery of Costs Allowed. The City shall not assign all or any part of its interest in Leased Water hereunder for an amount in excess of that portion of the Water Lease Charge that is attributable to the portion of the Leased Water that is assigned. Nothing in this Lease Agreement shall affect the City's ability to recover actual future costs, if any, incurred for the transportation, treatment, and distribution of the assigned Leased Water.

4.13 Allocation and Repayment of CAP Costs. Pursuant to Section 205(d) of the Act, for the purposes of determining the allocation and repayment of costs of any stages of the CAP hereafter constructed, the costs associated with the delivery of Leased Water shall be non-reimbursable, and such costs shall not be included in CAWCD's repayment obligation. Pursuant to Section 206(a)(7) of the Act, the costs associated with the construction of the CAP shall be non-reimbursable by the Community. No CAP water service capital charges shall be due or payable for the Leased Water.

4.14 Community not required to pay. The Community shall not be obligated to pay water service capital charges or M&I subcontract charges or any other charges or payments for the Leased Water.

5. WAIVER OF SOVEREIGN IMMUNITY

The United States' waiver of its sovereign immunity contained in the Act applies to any claim or

claims which the City or the Community may have against it, which relate to the interpretation or enforcement of this Lease Agreement. The Community's limited waiver of its sovereign immunity contained in the Act applies to any claim or claims which the City may have against it, which relate to the interpretation or enforcement of this Lease Agreement.

6. DEFAULT AND REMEDIES

6.1 Events of Default. Any failure by the City to pay the consideration specified in Subparagraph 4.3, above within thirty (30) days after any such payments become due shall constitute a default of the City's obligations under this Lease Agreement.

6.2 Notice of Default. In the event of a default by the City as defined in Paragraph 6.1 above, the Community shall provide written notice ("Notice of Default") to the City and contemporaneously, shall send copies of such notice to the Other Cities, specifying the default and demanding that the default be cured within ninety (90) days of the notice. Notice shall be given in the manner and to the City officers specified in Subparagraph 8.10 of this Lease Agreement. The Notice of Default shall specifically describe the default and state the amount due from the City, which amount shall be the sum of all payments due the Community that should have been paid, but were not paid ("Default Amount"). The purpose of this Subparagraph is to put the City and the Other Cities on notice as to the time and cause of default. De minimis mistakes in the Notice of Default shall not invalidate the effectiveness of the Notice of Default.

6.3 Remedies for Failure to Pay. If the City fails to cure a non-payment default in accordance with Subparagraph 6.4(A), and if none of the Other Cities cures the non-payment default pursuant to Subparagraph 6.4(B), the Community may terminate this Lease Agreement. If the Community terminates this Lease Agreement for non-payment, the Community shall be entitled to

judgment as provided at Subparagraph 6.4(C), but shall not be entitled to any other remedy as a result of such a default.

6.4 Curing for City's Non-payment. After Notice of Default, the default may be cured as follows:

A. During the first thirty (30) days following the Notice of Default ("First Grace Period"), the City shall have the exclusive right to cure any such default by tendering the Default Amount to the Community together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the date that the missed payment became due ("due date"). During the first fifteen (15) days following the Notice of Default, the City shall provide written notice to the Other Cities declaring its intent whether it will cure the default. Provided that all payments becoming due during the First Grace Period shall be automatically added to and become a part of the Default Amount and interest thereupon shall accrue in accordance with this provision.

B. In the event that the defaulting City has not cured the default within thirty (30) days following the Notice of Default, the City, any of the Other Cities, and/or any combination thereof, may thereafter, but only within sixty (60) days following the end of the First Grace Period ("Second Grace Period"), cure the default by tendering the Default Amount to the Community together with interest on the Default Amount accrued at the annual rate of ten percent (10%) calculated from the due date. Each of the Other Cities that desires to succeed to the interest of the City shall, within sixty (60) days of the Notice of Default, give notice to the Other Cities and the City that it will be a curing city and declare the maximum amount of water that it will lease and succeed to the interest of the City. Each curing city shall succeed to the interest and obligation of the City to the extent of its contribution and the City and each curing city shall execute a Assignment and Assumption Agreement in the form attached hereto as Exhibit

6.4 (exhibit 17.1.1.B of the Settlement Agreement) whereby the curing city or cities agrees to be bound by the terms of this Lease Agreement to the extent of its contribution. The defaulting City shall be responsible for any proportionate remainder of any Default amount not cured by the Other Cities pursuant to this Subparagraph. A copy of such Assignment and Assumption Agreement(s) shall be provided to the Operating Agency, the Community and the United States. The Community shall accept payment from such curing city or cities in lieu of payment by the City. If the curing cities collectively request more water than what is available for assignment and assumption under this Subparagraph, such curing cities shall succeed to the interest of the Cities in equal shares ("equal share amount"); provided, however, if any of the curing cities request less water than its equal share amount, then the difference between that curing city's equal share amount and the amount it requested shall be divided among the other curing cities in equal shares.

If the City fails to cure its default within the time-period set forth in this Subparagraph 6.4(B) it shall execute an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit 6.4 with each curing city. Provided, however, if the default is not fully cured by the end of the Second Grace Period the City's right to Leased Water which has not been assigned pursuant to this Subparagraph shall be forfeited and the Community shall be entitled to the remedy described in Subparagraph 6.4(C) of this Lease Agreement *pro rata* for that portion that has not been cured as provided for herein. If the City, or the City and any combination of the Other Cities have arranged to cure the default and the curing cities have signed all necessary Assignment and Assumption Agreements, but the City has either failed or refused to sign such agreement(s) before the end of the Second Grace Period, the Assignment and Assumption Agreements(s) shall be self-executing without the need for the City to sign an Assignment and Assumption Agreement, the form of which is attached hereto as Exhibit

6.4. A cure effected pursuant to this Subparagraph shall constitute full performance of such default payment obligation to the extent of the amount of Leased Water assigned and assumed.

C. After Notice of Default and after failure to cure as provided for in Subparagraphs 6.4(A) and (B) hereof, the City will be indebted to the Community and the Community will be entitled to judgment for the Default Amount plus an amount equal to three percent (3%) of the balance of the Water Lease Charge not yet due and payable, together with interest on the three percent (3%) of the balance of the Water Lease Charge not yet due and payable, from the time of default until judgment is obtained, and such costs and reasonable attorneys fees as the Community incurs after the due date for obtaining and collecting judgment for the unpaid amounts as a result of such default. The balance of such amount shall continue to accrue interest at the rate of ten percent (10%) per annum until paid in full. Payment of this amount plus such accrued interest as provided in this Subparagraph shall constitute full performance of the City's obligations under Subparagraph 4.3 of this Lease Agreement.

7.0 TERMINATION AND SURRENDER OF WATER

7.1 Voluntary Termination of this Lease. After offering to assign the Leased Water to the Cities identified in and in accordance with Subparagraph 4.12, the City may terminate this Lease Agreement at any time by submitting written notice to the Community of its decision to terminate at least one year prior to the time that it intends the Lease Agreement to be terminated, provided, however, the City must receive the written approval of the Community before it may terminate this Lease Agreement pursuant to this Subparagraph 7.1 unless the City has paid the Community at least one-fourth of the Water Lease Charge (plus any interest due) set forth in Paragraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the Community's agreement that the City may withdraw its notice. The City shall continue to make all payments required by this Lease Agreement during that one year

period of time and shall not use any Leased Water beyond the day for which the last payment is intended to pay. If the City terminates this Lease Agreement, all sums paid by the City to the Community prior to the date of termination shall remain the property of the Community and shall be non-refundable to the City.

7.2 Voluntary Surrender of a Portion of the Leased Water. After offering to transfer, assign or sublease the Leased Water to the Other Cities identified in and in accordance with Subparagraph 4.12, the City may elect, at any time during the term of this Lease Agreement to surrender its interest in any portion of the Leased Water by providing written notice to the Community of its decision to surrender such interest at least one year prior to the time that it intends to surrender its interest. However, the City must receive the written approval of the Community before it may surrender any portion of its interest under this Lease Agreement pursuant to this Subparagraph 7.2 unless the City has paid the Community at least one-fourth of the Water Lease Charge set forth in Paragraph 4.3 of this Lease Agreement. Such notice is irrevocable except upon the Community's agreement that the City may withdraw its notification. The City shall continue to make all payments required of this Lease Agreement during that one year period of time and shall not use any Leased Water that will be surrendered pursuant to this Subparagraph 7.2 beyond the day for which the last payment is intended to pay. If the City surrenders its interest in all or any portion of the Leased Water, all sums paid by the City to the Community for such water prior to the date of surrender shall remain the property of the Community and shall be non-refundable to the City. All portions of the Lease Agreement shall remain in effect for all the portions of the Leased Water that are not surrendered. To the extent that the retained portion of the Leased Water has not already been paid for by the City, payment shall be in proportion to the amount of water retained by the City, charged at the per acre-foot charge, including applicable

interest, for Leased Water as calculated pursuant to Subparagraph 4.3 of this Lease Agreement for the years remaining on the term of this Lease Agreement. At the time of the surrender of Leased Water pursuant to this Subparagraph 7.2, the City shall pay to the Community an amount equal to three percent (3%) of the principal payment for the portion of the Leased Water surrendered.

8. GENERAL PROVISIONS

8.1 United States Consent to Lease Agreement. The United States hereby approves and consents to this Lease Agreement.

8.2 Community and City Required to Meet and Discuss Regarding Possible Lease Agreement Renegotiation of Lease Agreement Allowed. The Parties to this Lease Agreement agree that the Community and the City may renegotiate this Lease Agreement at any time during its term, as provided in Subparagraph 8.5 of the Settlement Agreement.

8.3 Community and City Required to Meet and Discuss Regarding Possible Lease Agreement Extension. If the ADWR final rule referenced in Subparagraph 8.5 can be satisfied by an extension of the term of this Lease Agreement to allow Leased Water to be counted in the City's Assured Water supply, the Community agrees to meet with the City and discuss the extension of the term of the Lease Agreement; provided, however, the Community shall not be required to agree to terms other than those as described in this Lease Agreement.

8.4 Effective Date. This Lease Agreement shall become effective when: (1) ADWR adopts a rule, satisfactory to the City, consistent with the Groundwater Code, that enables it to use Leased Water as part of an Assured Water Supply and (2) it is signed by all parties to the Lease Agreement.

8.5 Rejection of Lease Agreement. On or before January 1, 2005, or thirty (30) days after

the Enforceability Date of the Settlement Agreement, whichever is later, a City at its option may, upon written notice to the Community, reject this Lease Agreement whether or not ADWR has adopted a final rule enabling the Cities to use the Leased Water as part of an Assured Water Supply. In the event a City rejects this Lease Agreement pursuant to this Subparagraph 8.5, the City shall have no obligations under this Lease Agreement and the City's entitlement shall be offered to the other Cities in equal shares until that water is fully leased.

8.6 Enforceability of Lease Agreement. On the later of January 1, 2005 or the Enforceability Date of the Settlement Agreement, this Lease Agreement shall be enforceable between the Community and the City notwithstanding the performance or non-performance of other provisions of the Settlement Agreement not related to this Lease Agreement. The provisions of the Settlement Agreement that relate to this Lease Agreement include, without limitation, Paragraphs 8.0, and 17.0.

8.7 Invalidity of Lease Agreement. If, as a result of any acts or omissions by a person or entity not a party to this Lease Agreement, the City's entitlement to Leased Water under this Lease Agreement is determined to be invalid by a final judgment entered over the opposition of the City with the result that the Lease Agreement is deemed null and void, the Community shall refund to the City that portion of the lease payment that the number of years remaining in the lease term at the time of such determination bears to the total lease term.

8.8 Approval, Consent and Ratification. Each Party to this Lease Agreement, does by execution of the signature pages hereto, approve, endorse, consent to and ratify this Lease Agreement.

8.9 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

8.10 Notice. Any notice to be given or payment to be made under this Lease Agreement

shall be properly given or made when received by the officer designated below, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows (or addressed to such other address as the Party to receive such notice shall have designated by written notice given as required by this Section 8.10):

- (a) As to the United States:
The Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Area Director
Scottsdale Area Office
Bureau of Indian Affairs
P.O. Box 10
Scottsdale, Arizona 85001

Regional Director
Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89005

- (b) As to the Community:

Governor
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

General Counsel
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

- (c) As to the Cities:

Chandler City Manager

P.O. Box 4008 Mail Stop 605
Chandler, AZ 85244-4008

Chandler City Attorney
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85225- 4008

Glendale City Manager
5850 West Glendale Ave.
Glendale, AZ 85301

Glendale City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

Goodyear City Manager
119 North Litchfield Road
Scottsdale, Arizona 85338

Goodyear City Attorney
119 North Litchfield Road
Scottsdale, Arizona 85338

Mesa City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

Mesa City Attorney
20 E. Main St., Ste. 850
P.O. Box 1466
Mesa, Arizona 85211-1466

Peoria City Manager
8401 West Monroe
Peoria, Arizona 85345

Peoria City Attorney
8401 West Monroe
Peoria, Arizona 85345-6560

Phoenix City Manager
200 West Washington, Suite 1200
Phoenix, Arizona 85003

Phoenix City Attorney
200 W. Washington, Suite 1300
Phoenix, Arizona 85003-1611

Scottsdale City Manager
3939 Drinkwater Blvd.
Scottsdale, AZ 85251

Scottsdale City Attorney
3939 Drinkwater Blvd.
Scottsdale, Arizona 85251

8.11 Governing Law. This Lease Agreement shall be governed by and construed in accordance with applicable Arizona and federal law.

8.12 Waiver. No waiver of any breach of any of the terms or conditions of this Lease Agreement shall be construed as a waiver of any subsequent breach of the same or other terms or conditions of this Lease Agreement.

8.13 Severability. If any provision or clause of this Lease Agreement or application thereof to any person or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions, clauses or applications of this Agreement which can be given effect without the invalid or unenforceable provision, clause or application, and to this end, the provisions and clauses of this Agreement are severable; provided, however, that no provision or clause shall be severed if the severance would deprive any Party of its material benefits under this Agreement.

8.14 Construction and Effect. This Lease Agreement and each of its provisions are to be construed fairly and reasonably and not strictly for or against either Party. The paragraph and subparagraph titles used in this Lease Agreement are for convenience only and shall not be considered in the construction of this Lease Agreement.

8.15 Successors and Assigns. Each of the terms and conditions of this Lease Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

8.16 Benefits of Lease Agreement. No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease Agreement or to any benefit that may arise herefrom. This shall not be construed to extend to this Lease Agreement if made with a corporation or company for its general benefit.

8.17 Third Party Beneficiaries. There shall be no third party beneficiaries of this Lease Agreement, provided however, that the Other Cities shall be third party beneficiaries for enforcement of Subparagraphs 4.12 and 6.4 of this Lease Agreement.

8.18 Good Faith Negotiations. This Lease Agreement has been negotiated in good faith for the purposes of advancing the settlement of legal disputes, including pending litigation, and all of the Parties agree that no information exchanged or offered, or compromises made, in the course of negotiating this Lease Agreement may be used as either evidence or argument by any Party hereto in any legal or administrative proceeding other than a proceeding for the interpretation or enforcement of this Lease Agreement.

8.19 Further Instruments and Acts. Each Party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting Party, in order to carry out the intent and purpose of this Lease Agreement.

8.20 Attorneys' Fees. In the event of litigation between the parties to enforce this Lease Agreement, the prevailing Party in any such action shall be entitled to recover reasonable costs and

expenses of suit, including, without limitation, court costs, attorneys' fees and discovery costs; provided, however, that this Subparagraph 8.20 shall not apply to the United States.

8.21 Remedies for Default on Matters other than Failure to Pay. The Community may enforce by the remedy of specific performance any City obligation, other than an obligation to pay which is addressed at Subparagraphs 6.3 and 6.4(C) of this Lease Agreement. The Community shall not be entitled to any other remedy as a result of such default. Actions to enforce the terms and conditions of this Lease Agreement are subject to the provisions of Subparagraph 8.20.

Final execution document
February 4, 2003

IN WITNESS WHEREOF the parties have executed this Lease Agreement on the date
written above.

FOR THE GILA RIVER INDIAN COMMUNITY

By:

Rahel P. Yano

Dated:

2/4/2003

Approved as to form

G. B. Lewis

Attest: Janice J. Stewart

Final execution document
February 4, 2003

FOR THE CITY OF SCOTTSDALE

By: _____

Dated:

Approved as to form

**Exhibit 4.12 of the Scottsdale Lease Agreement
(form of which is exhibit 17.1.1A of the Settlement Agreement)**

**VOLUNTARY ASSIGNMENT AND ASSUMPTION
OF CAP LEASED WATER**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned City of Scottsdale ("Assignor"), hereby transfers, assigns and conveys to the City of _____ ("Assignee") ____ percent (___%) of the following:

Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated ____ between Assignor and the Gila River Indian Community (the "Community") and the United States ("Lease Agreement"). This ____ percent (___%) equals ____ acre-feet of Leased Water.

1. Voluntary Assignment and Assumption Pursuant to Paragraph 4.12 of Lease Agreement.

This Voluntary Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 4.12 of the Lease Agreement. Except as provided in Paragraph 2 of this Voluntary Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. Assumption of Rights and Obligations Under Lease Agreement. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms of Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise

from and after the date hereof. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor's Lease Agreement for the period prior to the date hereof and Assignee shall have no liability therefor. Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date of this Voluntary Assignment and Assumption Agreement for the assigned portion of the Leased Water. Nothing herein shall affect the Community's rights as against the Assignor for acts or omissions arising before the date of this Voluntary Assignment and Assumption Agreement.

3. **Other Acts.** Each party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Voluntary Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the Community pursuant to Paragraph 18.0 of the Settlement Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned to Assignee by this Voluntary Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Voluntary Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Voluntary Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs.

7. **Effective Date.** This Voluntary Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto.

IN WITNESS WHEREOF the parties have executed this Voluntary Assignment and Assumption Agreement on the ____ day of ____, 200__.

<p>Approved as to Form:</p> <p>By _____ Its _____</p> <p>By _____ Its _____</p> <p>The parties to this Voluntary Assignment and Assumption Agreement certify that a copy of this Voluntary Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12(b) and 8.7 of the Lease Agreement to the Gila River Indian Community, the United States and the Operating Agency on _____, 200__.</p>	<p>CITY OF _____ (Assignor)</p> <p>By _____ Title _____</p> <p>CITY OF _____ (Assignee)</p> <p>By _____ Title _____</p>
--	--

Exhibit 6.4 of the Scottsdale Lease Agreement
(form of which is exhibit 17.1.1B of the Settlement Agreement)

ASSIGNMENT AND ASSUMPTION OF CAP LEASED WATER

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned City of Scottsdale ("Assignor"), hereby transfers, assigns and conveys to the City of _____ ("Assignee") _____ percent (___%) of the following:

Assignor's right and interest in and to the Leased Water provided for in the Lease Agreement dated _____ between Assignor and the Gila River Indian Community (the "Community") and the United States ("Lease Agreement"). This _____ percent (___%) equals _____ acre-feet of Leased Water.

1. Assignment and Assumption Pursuant to Paragraph 6.4 of Lease Agreement.

This Assignment and Assumption Agreement is executed pursuant to, and is valid only if executed in accordance with, Subparagraph 6.4 of the Lease Agreement. Except as provided in Paragraph 2 of this Assignment and Assumption Agreement, the covenants, agreements and limitations provided in the Lease Agreement are hereby incorporated herein by this reference as if herein set out in full and shall inure to the benefit of and shall be binding upon Assignor and Assignee, and their respective successors and assigns.

2. Assumption of Rights and Obligations Under Lease Agreement. Assignee agrees to pay all applicable water service charges associated with the delivery of Assignee's share of the Leased Water and otherwise assumes, in accordance with the terms Assignor's Lease Agreement, the benefits, burdens and obligations of Assignor thereunder to the extent of Assignee's percentage interest of the Leased Water assumed, and to the extent such benefits, burdens and obligations arise from and after the date hereof, except that Assignee agrees to pay and be responsible to the Community for the

Assignee's share of the Default Amount set forth in Paragraph 6.2 of the Lease Agreement. Assignor shall and hereby does agree to continue to be responsible and indemnify Assignee for all the burdens and obligations of Assignor under the Lease Agreement for the period prior to the date of default under Section 6.1 of the Lease Agreement and Assignee shall have no liability therefor. For the assigned portion of the Leased Water, Assignor shall have no right to the benefits and no responsibility for the burdens or obligations that arise after the date that this Assignment and Assumption Agreement is effective. Nothing herein shall affect the Community's rights as against the Assignor for acts or omissions arising before the date of this Assignment and Assumption Agreement.

3. **Other Acts.** Each party will, whenever and as often as it shall be requested so to do by the other, perform such acts and cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Assignment and Assumption Agreement.

4. **Water Assigned Becomes a Part of Any Pre-Existing Lease Agreement.** If the Assignee is a party to a pre-existing Lease Agreement with the Community pursuant to Paragraph 18.0 of the Settlement Agreement, that Lease Agreement is hereby deemed amended, without further action, to include the additional rights and interest in the Leased Water assigned by this Assignment and Assumption Agreement and shall be subject to enforcement pursuant to that pre-existing Lease Agreement as well as by its assumption of the Assignor's burdens and obligations as provided for herein.

5. **Counterparts.** This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together,

shall constitute one and the same instrument.

6. **Attorneys' Fees.** In the event of litigation between the parties to enforce this Assignment and Assumption Agreement, the prevailing party in any such action shall be entitled to recover reasonable costs and expenses of suit, including, but not limited to, court costs, attorneys' fees and discovery costs.

7. **Effective Date.** This Assignment and Assumption Agreement shall become effective when it is signed by the parties hereto and the Assignee has paid its share of the Default Amount in accordance with Subparagraph 6.4 B of the Lease Agreement, or if not signed by Assignor, upon Assignee's signature in accordance with the provisions of Paragraph 6.4 B of the Lease Agreement describing "self execution", and the Assignee's payment of its share of the Default Amount.

IN WITNESS WHEREOF the parties have executed this Assignment and Assumption Agreement on the ____ day of _____, 200__.

CITY OF _____ (Assignor)

By _____

Title _____

CITY OF _____ (Assignee)

By _____

Title _____

The parties to this Assignment and Assumption Agreement certify that a copy of this Assignment and Assumption Agreement was provided in accordance with Subparagraphs 4.12(b) and 8.7 of the Lease Agreement to the Gila River Indian Community, the United States and the Operating Agency on _____, 2__.

CITY COUNCIL REPORT



MEETING DATE: 04/14/2003 ^{15th} ITEM No. 15 GOAL: Transportation

SUBJECT

Construction Bid Award for Scottsdale Road, Phase One, from Indian Bend to McCormick Parkway

REQUEST

AUTHORIZE Construction Bid Award No. 03PB073 to Hunter Contracting Co., the lowest responsive bidder, at their total base unit price bid of \$7,491,359.22.

AUTHORIZE an increase in budget authorization in the total amount of \$1,800,000 to CIP Account No. S2707 (Scottsdale Road – Indian Bend to Gold Dust) effective in Fiscal Year 2003/04.

AUTHORIZE depositing the following estimated payments to CIP Account No. S2707 from the Town of Paradise Valley and various utility companies for work to be performed under City of Scottsdale construction contracts:

- \$1,100,000.00 from the Town of Paradise Valley per C.O.S. Contract No. 96001A, underground conversion of 69 KV power lines, which was approved by Council on December 9, 2002.
- \$400,000.00 from Southwest Gas for trenching and related costs for system relocation and expansion.
- \$200,000.00 from Qwest Communications for system relocation and expansion.
- \$100,000.00 from COX Communications for system relocation.

AUTHORIZE estimated payments totaling \$2,500,000 to APS for this company's direct costs to install 69kV underground conversions, 69kV temporary relocations, 12kV underground conversions and new street light system construction for the entire length of this project.

The construction contract proposed for award by this action is the first of two major contracts planned to widen and reconstruct a 2-¾ mile length of Scottsdale Road between Indian Bend Road and Gold Dust Street. This contract includes the widening of a one-mile length of Scottsdale Road between Indian Bend Road and McCormick Parkway and includes a new bridge to be constructed over the Indian Bend Wash immediately south of the McCormick Parkway. The underground conduit system for the 69kV power lines, through this portion of the project, will also be installed as part of this contract and the existing overhead 69kV lines will be temporarily relocated along the east and west sides of Scottsdale Road.

The second construction contract to complete the remaining 1 ¼ mile widening and reconstruction of Scottsdale Road is planned for award in April, 2004.

Action Taken _____

Related Policies, References:

- Intergovernmental Agreement (IGA) No. 96-0001 between City of Scottsdale (city) and Town of Paradise Valley (town) (Approved 2/5/96 by Scottsdale City Council).
- Amendment to IGA No 96-001A which established responsibilities for under grounding of the existing 69kV electrical power line between the city and the town. (Approved 12/9/02 by Scottsdale City Council and approved 12/19/02 by Paradise Valley Town Council)
- De-annexation Ordinance (Approved 11/7/02 by Paradise Valley Town Council and approved 12/9/02 by Scottsdale City Council).

BACKGROUND

This construction contract is the second of three planned contracts that will result in a major reconstruction and widening of Scottsdale Road from Indian Bend Road to Gold Dust Avenue. Construction of the entire project is currently scheduled for completion by December, 2004.

The first construction contract, to relocate utilities along the west side of Scottsdale Road and construct a screen wall from the Indian Bend Wash to Doubletree Ranch Road, was awarded by Council on January 6, 2003. This work is now well underway.

The final scope and budget for this project were established after approval of an IGA with the Town of Paradise Valley in 1996. Construction of any portion of this project has been held until the Pima Freeway was completed through the City of Scottsdale.

ANALYSIS & ASSESSMENT

The widening and construction of this 2 ¾ mile length of Scottsdale Road is scheduled as follows:

Beginning in January, 2003, the existing 12kV electrical lines and other utilities are being relocated and placed underground along the west side of Scottsdale Road from approximately Hummingbird Lane to Berneil Drive. At the same time, a new screen wall is under construction along the west side of Scottsdale Road from approximately McCormick Parkway to Doubletree Ranch Road. This work has caused minor disruptions to the two existing southbound lanes of Scottsdale Road during off-peak traffic periods. The purpose of this contract is to relocate as many of the utilities as possible in the corridor in preparation for the major widening of Scottsdale Road.

Work under this major construction contract to widen and improve Scottsdale Road between Indian Bend Road and McCormick Parkway would begin in early May, 2003. A new bridge will be constructed over the Indian Bend Wash just south of McCormick Parkway. The underground conduit system for the 69 kV lines for this segment will be installed at this time. In order to install the underground 69 kV lines, the existing overhead 69 kV lines will need to be temporarily relocated along the east side of Scottsdale Road.

In May, 2004, a second major construction contract to complete the widening of Scottsdale Road between McCormick Parkway and Gold Dust Avenue will be initiated. The underground conduit system for the 69 kV lines from McCormick Parkway to Doubletree Ranch Road will be installed at this time. Again, in order to construct the new underground duct systems and the street widening, the overhead 69 KV lines will need to be temporarily relocated.

movements will have to be restricted in order to provide these lanes.

**OPTIONS & STAFF
RECOMMENDATION**

Description of Option A:

Do not approve this contract at this time and delay the work until both phases could be completed under one construction contract. This would drastically lengthen that contract and double the impacted portion of the roadway.

Recommended Approach:

Approve this contract in order to advance the overall project in the most expeditious and least disruptive manner.

Proposed Next Steps:

Approval of this construction contract would enable the initiation of major construction activity in early May with a targeted completion of this contract by mid-December, 2003.

RESPONSIBLE DEPT(S)

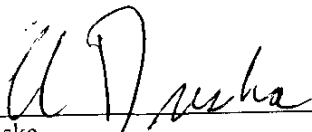
Municipal Services, Capital Project Management

STAFF CONTACT(S)

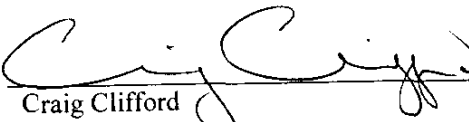
Alex McLaren, Construction and Design Director, (480) 312-7099,
amclaren@ci.scottsdale.az.us

Dan Walsh, Project Manager, (480) 312-5248
dwalsh@ci.scottsdale.az.us


APPROVED BY


Al Dreska
Municipal Services General Manager
adreska@ci.scottsdale.az.us (480) 312-5555

4/1/03
Date


Craig Clifford
Chief Financial Officer
cclifford@ci.scottsdale.az.us (480) 312-2364

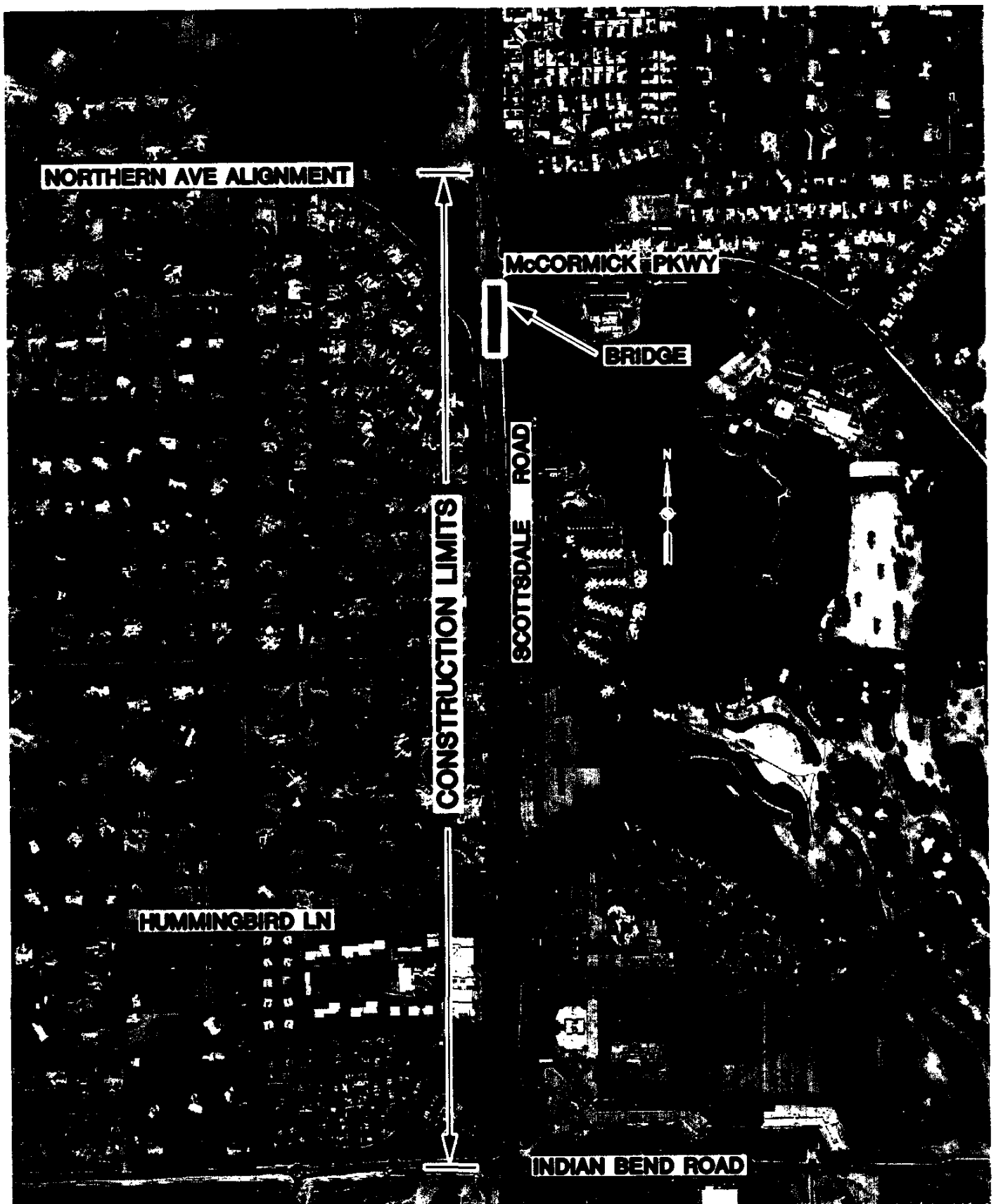
4/1/03
Date


Roger Klingler
Assistant City Manager
rklingler@ci.scottsdale.az.us (480) 312-5830

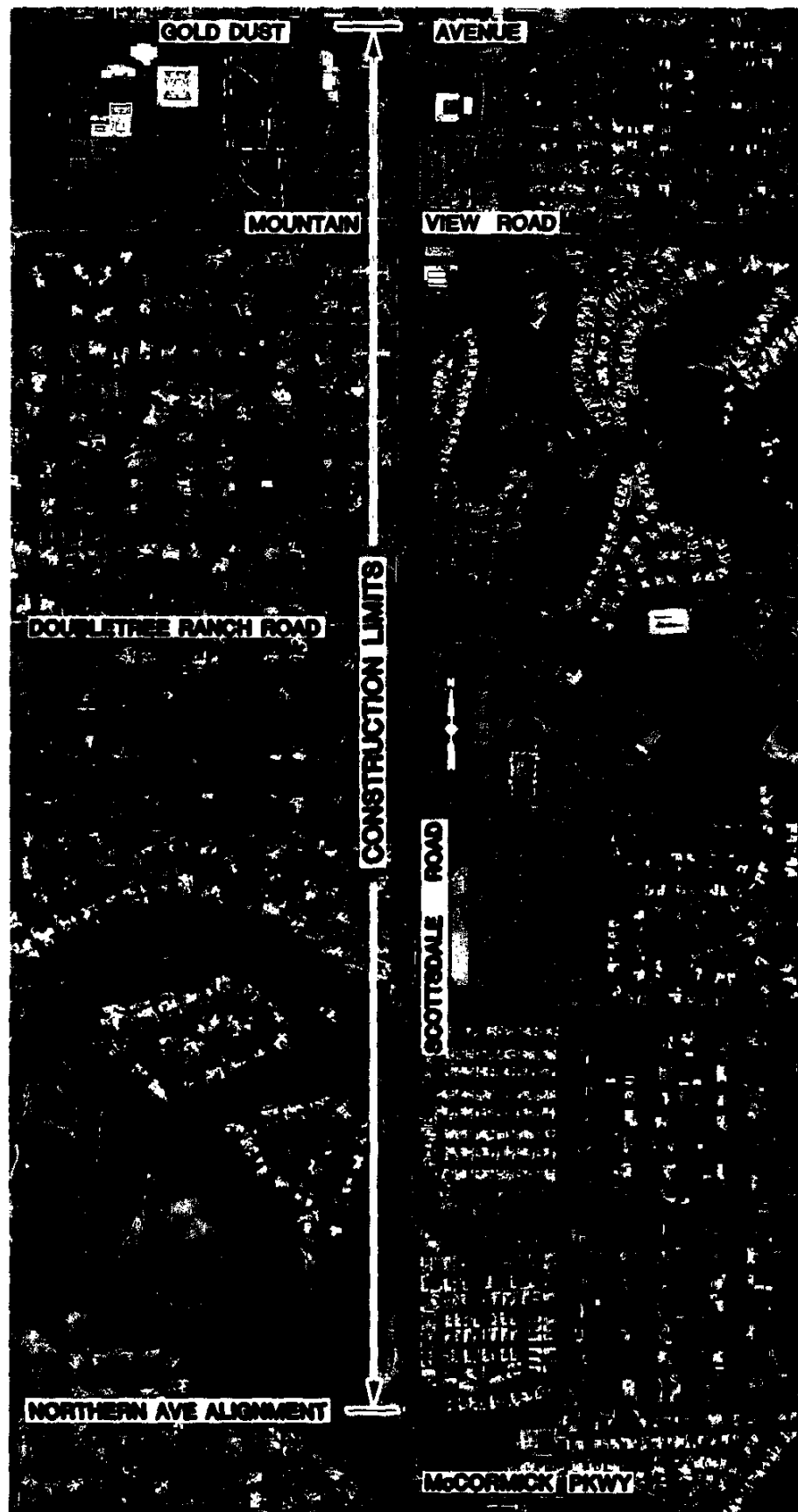
4/4/03
Date

ATTACHMENTS

1. Location Maps



**SCOTTSDALE ROAD - INDIAN BEND RD TO McCORMICK PKWY
CONSTRUCTION CONTRACT FOR APRIL 14th 2003 COUNCIL CONSIDERATION**



**SCOTTSDALE ROAD - McCORMICK PKWY TO GOLD DUST
CONSTRUCTION CONTRACT FOR COUNCIL CONSIDERATION IN SPRING 2004**

CITY COUNCIL REPORT



MEETING DATE: 04/14/2003 ^{15a} ITEM NO. 16 GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT

Contract Modification for Phase 2 Design of the Chaparral Water Treatment Plant Influent and Distribution Lines.

REQUEST

AUTHORIZE Contract Modification to Engineering Services Contract No. 2002-073-COS-A with HDR Engineering, Inc., in the amount of \$1,375,559 for Phase 2 of the design of Chaparral Water Treatment Plant Inlet and Distribution Line Project.

Related Policies, References: Engineering Services Contract No. 2002-073-COS, approved by City Council on July 1, 2002.

BACKGROUND

The City's new Chaparral Water Treatment Plant, to be located at the southeast corner of Hayden and McDonald Roads, is currently under design. Construction is scheduled to begin by the end of 2003. This contract will finalize the design of the waterlines associated with the new treatment plant.

This contract modification will provide the construction documents for a new distribution waterline, a new CAP finished water distribution line (connecting this plant to the CAP plant to create backup supply capability), a new influent line, and an intake structure at the Arizona Canal. This system of pipelines is required to distribute potable water from and provide raw water to the Chaparral Water Treatment Plant (WTP) (see Attachment 1).

The City's 2001 Water Resources Master Plan conceptually recommended that these distribution lines should be routed south from the plant to Indian School Road within the Hayden Road corridor; and that the influent line and intake structure should be located at the Arizona Canal and within the 82nd Street corridor. While these corridors are the most direct routes for the distribution and influent lines, several other issues requiring consideration in selecting the pipeline routes include: constructability, environmental considerations, public acceptance, commercial acceptance, conflicts and/or constraints with other City projects, hydraulic considerations, existing utility constraints, land availability and right-of-way and traffic consideration. An extensive public involvement process has been implemented to review options and alternatives with area residents and businesses.

This design contract is divided into two phases:

- Phase I, which has recently been substantially completed, consisted of establishing the extent and location of the Chaparral finished water

Action Taken _____

distribution waterline, a new CAP finished water distribution line, a new SRP raw water supply line, and an intake structure. The function of these facilities is to provide raw (untreated) water to and to distribute potable water from the Chaparral WTP. The concept design effort incorporates the sizes of pipelines/facilities and the water demands identified in the 2001 Water Resources Master Plan.

- Phase II will involve detailed design of the facilities, continued public outreach, production of construction documents for public bidding, and bidding phase assistance. Because the level of consultant's design effort in Phase II was dependent on the results obtained from Phase I, this contract modification was defined and priced at the conclusion of Phase I and is now presented to City Council for its consideration.

An additional contract modification will be necessary for construction phase services. This modification will be brought before Council at the same time as the construction contract award.

The concept design developed during Phase I has identified the following major components for the new waterlines:

- A Chaparral finished water distribution line consisting of approximately 2 miles of 42-inch pipe, which distributes water to citizens south of the WTP. Two different routes will be taken to the 30 percent design level and a final route will then be chosen. This approach is the result of community input received at two public meetings and individual citizen input regarding concerns of existing neighborhoods. The final route will be established after further public input.
- A CAP finished water distribution line consisting of approximately 5 miles of 24-inch pipe, which will provide water to the McCormick Ranch area, in lieu of three arsenic-tainted wells; and also provide a backup source of treated water to citizens south of the Arizona Canal during periods of canal maintenance.
- An SRP raw water intake structure and gravity influent line consisting of approximately 0.75 miles of 48-inch pipe to deliver raw SRP water to the new WTP.

This contract modification for the Phase II final design represents the next step in completing a new water source. Phase II design is expected to be completed in approximately nine months. Construction could begin in early 2004 and be completed within two years.

ANALYSIS & ASSESSMENT

Recent staff action. In February 2002, 92 engineering firms were solicited to submit their qualifications to develop the design for the project. Fourteen firms responded. City staff reviewed these qualifications and selected three firms to be interviewed. Each firm has extensive work experience in Scottsdale. An interview panel selected HDR, Inc. as the most qualified firm. The Purchasing Director confirms that the procurement procedures provided by the City Code have been followed. The C.I.P. Coordinator concurs that funds are available to authorize this contract.

On October 15, 2001, City Council approved the 2001 Water Resources Master Plan. This master plan recommended the implementation of a new water treatment plant and its associated waterlines.

On July 1, 2002, City Council approved engineering services contract 2002-073-COS with HDR, Inc. for the Phase I design of the Chaparral Water Treatment Plant Inlet and Distribution Line Project.

Contract process and terms. Engineering services contract 2002-073-COS includes the provisions for this contract modification for the Phase II final design, subject to City Council authorization.

Community involvement. This project will provide new waterlines to bring untreated canal water into the new 30 mgd Chaparral Water Treatment Plant and to carry the drinking water to the City's water distribution system. The City began public dialog on the waterline project within a series of public meetings held on the design of the water treatment plant and park extension.

The first phase of public involvement specifically on the waterline project was a series of newsletters designed to educate residents on the complexities of siting and building the waterlines. A total of three newsletters were distributed to all residents within the waterline corridor study area.

The first newsletter was distributed on November of 2002 and gave an overview of the project, defined the waterline corridor study area, and defined the criteria that would be used to choose the location for each waterline.

The second newsletter was distributed in December of 2002. It reviewed all of the project parameters that we explained in the first installment of the newsletter, but went on step further by identifying all of the waterline corridors the city was considering for each of the three waterlines. The newsletters second purpose was to invite residents to the first waterline specific public meeting that was held on December 18th.

At the public meeting the overall project was reviewed, explaining the need for the lines, the history of the project and the timeline it would follow. All the waterline options were reviewed as well as the criteria that would be used to make the final decision. Attendees were then broken into two groups based on the location of their home. They were then able to discuss the options that were most likely to impact them, ask questions and bring up alternative options. All attendees left the meeting with a fact sheet on the project and a comment form. At this meeting residents identified several additional options for waterline corridors they would like included in the study.

The third installment of the newsletter was distributed in January 2003 informed residents that based on the public input received at the December meeting as well as evaluating technical criteria, the City has narrowed the potential routes for the southern distribution line to two options and identified a preferred route for both the intake and northern distribution lines. This newsletter explained each of the options under consideration in detail and invited residents to the second public meeting that was held on January 28th.

At the meeting residents reviewed the four waterline routes under consideration and learned that one of the routes under consideration for the southern distribution line was an option that had come out of the December public meeting. All of the

routes that had been identified for consideration by residents were reviewed and it was explained why the majority of them were eliminated. Residents were given the opportunity to comment on the proposed waterline corridors and ask questions.

Additional newsletters will keep the public informed throughout the design and construction process. A public meeting will be held regarding the CAP finished waterline route in Summer 2003. The project team will present the final Chaparral distribution system route to the public in a meeting after the 30 percent design is completed.

RESOURCE IMPACTS

Available funding. Funding is available in the following accounts: 602-W0301, 602-W0302, 602-W4702.

These accounts are funded by a combination of water rates and water development fees.

Future budget implications. The total estimated construction cost of the new influent lines is \$4,500,000. The new distribution lines will cost approximately \$7,000,000 to construct. The CAP distribution line construction cost is estimated at \$8,000,000. These new waterlines will have minimum impact on future operations and maintenance budgets. Significant O&M cost savings will result from the elimination of three wells within McCormick Ranch.

Staffing, workload impact. No additional staffing is required by these waterline projects.

OPTIONS & STAFF RECOMMENDATION

Description of Option A: Authorize the contract modification for the Phase II design of this project. Proactively proceeding with this contract modification will benefit citizens by providing a method of conveying water to and from the new Chaparral Water Treatment Plant.

Description of Option B: Do not authorize the contract modification for the Phase II final design of this project. An alternative to proceeding with this Contract Modification would be to solicit Statement of Qualifications and repeat the entire selection process. This will result in delays to the new water treatment and distribution system in the southern service area, which has already been identified for improvement by the master plan. This would also create a time delay to address the significant learning curve of the new design firm. Re-advertisement would also create a cost increase to the project.

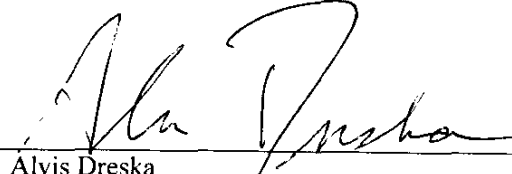
Recommended Approach: Staff recommends Option A. The authorization of this contract modification will benefit citizens by providing a new water source. The authorization of a contract modification is also more time and cost efficient than re-soliciting engineers for the final design.

Proposed Next Steps: If this action is approved, final design will start immediately and be completed by February 2004.

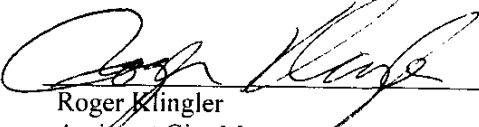
RESPONSIBLE DEPT(S) Capital Project Management and Water Resources

STAFF CONTACT(S) Doreen Song, P.E. Project Manager, (480)312-2367, dsong@scottsdaleaz.gov

APPROVED BY


Alvis Dreska
Municipal Service General Manager
adreska@scottsdaleaz.gov, (480)312-5555

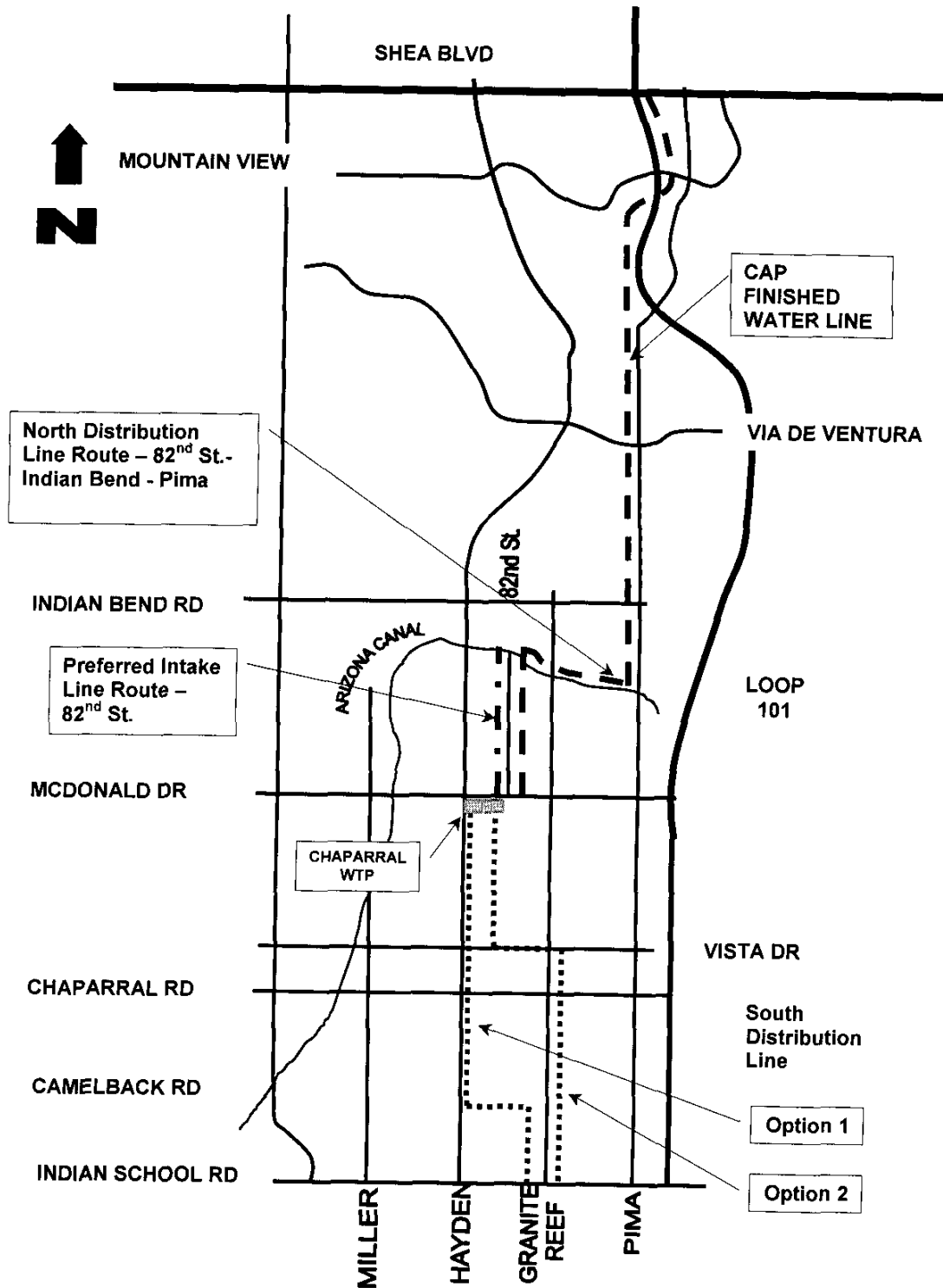
4/1/03
Date


Roger Klingler
Assistant City Manager
rklingler@scottsdaleaz.gov, (480)312-5830

4/1/03
Date

ATTACHMENTS

1. Project Location Map
2. Contract Modification to Engineering Services Contract 2002-073-COS-A.



Attachment 1:
Project Location Map

**CITY OF SCOTTSDALE
MODIFICATION TO ENGINEERING SERVICES
CHAPARRAL WTP INFLUENT AND DISTRIBUTION LINES**

THIS CONTRACT MODIFICATION, made and entered into this ^{15th} day of April, 2003, by and between the City of Scottsdale, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and HDR Engineering, Inc., hereinafter referred to as "Engineer", amending the Contract dated July 1, 2002, between City and Engineer.

WITNESSETH

THAT, the Mayor of the City of Scottsdale is authorized and empowered by provisions of the City Charter to execute Contracts and Contract Modifications.

WHEREAS, the CITY desires to extend the scope of the original Engineering Services contract for the piloting and preliminary design of Chaparral WTP Influent and Distribution Lines to include Phase II (Final Design Services), per the terms of the original contract.

WHEREAS, the City and the Engineer mutually agree to modify the Contract;

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1.0 MODIFICATIONS:

- 1.1 Section 1.0, Scope of Services, of the original contract is hereby amended by adding the following:

The City wishes to assign the Engineer the Phase II tasks specified in Exhibit A-1, Scope of Work, Phase II – Final Design and Bid Phase Assistance, which is hereby incorporated by reference and made part of this Contract.

The Engineer shall obtain all necessary information for the timely completion of the tasks specified in Exhibit A-1, Scope of Work, Phase II – Final Design and Bid Phase Assistance.

Section 2.1, Fee Schedule, of the original contract is hereby amended by adding the following:

FEE SCHEDULE

Engineer shall be paid for the Phase II services according to the following schedule:

Additional Conceptual Design Services	\$ 48,347
Final Design Basic Services	\$ 855,408
Final Design Allowance Services	<u>\$ 471,804</u>
Total	\$ 1,375,559

Section 3.2, Term of Contract, of the original contract is hereby amended by adding the following:

Contract Amendment Option: The scope of this Contract Modification shall be to complete Phase II work as listed in the Scope of Services. The City reserves the option to extend the Scope of Services to include Phase III (Construction Phase Services) of the Contract by a mutually agreeable contract amendment upon the recommendation of the Contract Administrator and concurrence with the Purchasing Director, and subject to City Council approval.

2.0 OTHER CONTRACT PROVISIONS:

All provisions of the original Contract not modified in Section 1.0, above, shall remain in full force and effect as stated therein.

IN WITNESS WHEREOF, THE CITY OF SCOTTSDALE by its Mayor and City Clerk have hereunto subscribed their name this ^{14th} day of April, 2003.

15th m

CITY OF SCOTTSDALE

ATTEST:

By: _____
Mary Manross, Mayor

ENGINEER:
HDR Engineering, Inc.

By: _____
David Anderson
Senior Vice President

By: _____
Sonia Robertson, City Clerk

CITY OF SCOTTSDALE REVIEW:

Doreen A. Song
City Contract Administrator

Monroe C. Warren
Purchasing Director

Myron Kuklok
Risk Management Director

APPROVED AS TO FORM:

David A. Pennartz
City Attorney

EXHIBIT A
CONTRACT MODIFICATION - A
CHAPARRAL WTP INFLUENT AND DISTRIBUTION LINES
FINAL DESIGN
SCOPE OF SERVICES

BRIEF DESCRIPTION OF THE PROJECT

HDR Engineering, Inc., acting under the authority and to the approval of the Contract Administrator, shall perform the survey and design to provide a new south distribution waterline, a new CAP Finished Water Distribution Line, a new influent line, and an intake structure to distribute potable water from and provide raw water to the Chaparral Water Treatment Plant (WTP). The north distribution waterline will provide water from the Chaparral WTP to Hayden Road and McDonald Drive. The north distribution waterline will be designed by the WTP design consultant. The south distribution waterline will provide water from the Chaparral WTP to the Zone 1S pressure zone, and to Indian School Road. The intake structure and influent line will provide raw water from the Arizona Canal to the Chaparral WTP. The CAP Finished Water Distribution Line will provide a back-up source of potable water from the City's higher pressure zones (north of Shea Blvd.) south to the Chaparral WTP distribution system.

Design services shall include the services described within this scope of services to produce two sets of construction bid documents. The first set of bid documents, herein after referred to as the South System, will include the design of two new south distribution waterlines, eight (8) system interconnections, piping, hydrants, and accessories for a complete system. The second set of bid documents, herein after referred to as the CAP System, will include the design of the CAP Finished Water Distribution Line, an influent waterline, an intake structure, six (6) system interconnections, one pressure zone valve, four (4) PRV stations, modifications to existing PRV No. 23, including piping, electrical power and SCADA availability, hydrants, and accessories for a complete system.

GENERAL REQUIREMENTS

1. **DESIGN STANDARDS** – All work shall conform to M.A.G. Standard Specifications and Details; City of Scottsdale M.A.G. Supplemental Specifications and Supplemental Standard Details; Current City of Scottsdale Design Standards and Policy Manual and SRP Standards; and any other applicable Governmental/Utility/Agency Specifications and Details. The Engineer is responsible for obtaining/verifying the latest City of Scottsdale Design Standards and Policy Manual, Section 1.2, Capital Project Management Plan Requirements, City of Scottsdale General Plan, etc. The Engineer will conform to Engineering Bulletin Number 10, "Guidelines for the Construction of Water Systems," by the Arizona Department of Environmental Quality. This includes obtaining the Certificate of Approval to construct water and/or wastewater systems during the submittal of the Final Plans for City approval.

2. **QUALITY CONTROL** – Quality control is a management system for producing a product that complies with the terms of the contract. The Engineer is responsible for maintaining a Quality Control program that will provide a quality product. The Engineer shall meet with the Contract Administrator throughout design to review and discuss the system they have implemented to ensure a successful end product. The system shall be acceptable to the Contract Administrator. Subsequent changes may be deemed necessary if the program is not producing the quality of work required by the contract.
3. **PROJECT DESIGN SCHEDULE** – Prior to commencing any work, the Engineer and the Contract Administrator shall meet to determine the project design and construction schedule. The Engineer shall meet with the Contract Administrator, prior to the monthly billing, to assess the project's progress in relationship to the design schedule. In the event that the Engineer falls behind the accepted design schedule, he shall be required to provide documentation explaining each event that caused the project to be delayed. In addition, the Engineer must prepare a written statement to identify what steps will be taken to return the project to its original schedule. This documentation will be necessary prior to payment approval. The design portion of this scope of services shall be substantially complete by May 31, 2004. This contract modification will be complete upon completion of the bid services portion of this scope of services.
4. **SUBMITTALS**
 - A. All submittals shall be submitted to the Contract Administrator. A Capital Improvement Project generally consists of a concept study; three plan submittals, structural calculations and a right-of-way submittal prior to the delivery of all design documents to the City for final approval. These procedures and their requirements may be modified by the Contract Administrator on specific projects in which the design direction and plan development are simplified.
 - B. It shall be the Consultant's responsibility to submit plans and coordinate with all agencies having utilities within the project limits. Likewise, the Consultant shall abide by any Intergovernmental Agency agreements and procedures. Any plan review fees for submittals to agencies other than the City of Scottsdale shall be paid by the Engineer.
 - C. If a plan submittal does not contain sufficient information to adequately review that phase of the design, the plans will be returned to the Engineer for completion and resubmittal of that phase of the design.

The City will arrange a meeting with the Engineer upon its completion of the submittal review to discuss the direction in which the work is proceeding, make note of any recommendations by the Engineer, and voice any concerns over the project.

The City's function in connection with submitted plans, specifications, construction cost estimates, design reports, etc., is that only of review for conformance with design standards, procedures, and criteria established by the City. The City shall not be responsible for checking the Engineer's plans for accuracy or engineered design.

- D. Consultant shall be responsible for:
1. Compliance with applicable design criteria, procedures, and Scope of Services.
 2. Preparation of plans and specifications of a quality representative of the profession, which are both clear and of sufficient detail to provide the Contractor direction by which this project may be constructed.
 3. Researching and obtaining available materials, maps, survey data, as-builts, reports, etc., as may be applicable to this project.
 4. Ongoing communication and informal contact with the City of Scottsdale Capital Project Management and Water Resources Department.

5. **MEETING PARTICIPATION** – As part of the contractual relationship with the City, the Engineer shall attend, prepare agenda and take notes at the meetings outlined herein. The notes shall be furnished to the Contract Administrator in the form of minutes. The notes shall address action items and the responsible parties. All meeting notes will be submitted to the Contract Administrator within 5 working days after the meeting. The Contract Administrator shall review and approve all meeting notes.

ADDITIONAL SERVICES DURING CONCEPTUAL PHASE

HDR has prepared the following description of additional work items associated with Contract Modification - A. These work items were either not identified in the original scope of services or were requested by the City requiring HDR to obtain additional project information and detail. The additional services are summarized as follows:

- Preparing memoranda for the evaluation of six additional pipeline routes as identified by the public and City Staff. These memoranda included four options for the South Distribution Line; one for the Influent Line; and one for the CAP Finished Water Distribution Line.
- Presenting the originally scoped Alternatives and their Options and the additional pipeline route memoranda to the public during two public meetings and several City Staff meetings. This includes incorporating the memoranda in the Concept Design Report as an appendix and summarizing it in the recommendations section (Section 5) of the report.
- Preparation of conceptual (10%) plan and profile drawings for approximately three miles in the Pima Road alignment for the CAP Finished Water Distribution Line.
- Coordination of utility potholing, test hole, and manhole invert identification efforts with subconsultant (TBE Group) for the South Distribution Line and the Influent Line.
- Coordination with City's consultant for the design of approximately 2,000 feet of 24-inch pipe in Pima Road as part of the CAP Finished Water Distribution Line. HDR furnished steel pipe specifications, coating specifications, two detail drawing sheets, and typical trench sections.

Scope of Additional Service items are described as follows:

1. PROJECT MANAGEMENT

Due to the increase in the term of the project (from December 1, 2002 to May 1, 2003), additional project management and monitoring services have been and will be required. This work effort includes the general oversight and coordination of the project team, conducting regular team meetings for project coordination, as well as assisting in communications between various City personnel and City departments.

2. PROJECT TECHNICAL MEETINGS

HDR will coordinate with City staff to establish the locations of existing utilities, tie-in locations and system connections required for six additional design memoranda. This task includes four site visits and two coordination meetings between HDR and City staff to supplement One-Stop-Shop as-built drawings and plan sets.

- A. HDR will attend two coordination meetings with City staff and conduct four site visits to evaluate the six additional pipeline routes.

3. PUBLIC INFORMATIONAL MEETINGS

HDR will provide services to allow for public information in the planning process with the goal to achieve consensus on the acceptability of the originally scoped pipeline routes and the additional pipeline route memoranda. It is anticipated that this effort will include two public meetings during the analysis and preparation of the Concept Design Report as originally scoped. In each public meeting, as additional services included under this tasked item, the Engineer will:

- A. Assist the City in the preparation of audio-visual aids and handouts for the Public Meeting. Present to the public, in a presentation format, the originally scoped Alternatives and their Options and the additional pipeline route memoranda.

4. COLLECT AND RESEARCH BACKGROUND DATA

HDR will collect and review available data to develop the additional memoranda for the South Distribution Line, Influent Line, and the CAP Distribution Line. This data and information includes obtaining available maps, records, right-of-way information, GIS data, as-built plans, reports, utility information, review of the City's Water Master Plan and current updates; and the latest Hydraulic Water Model; review of the City's General Plan; Chaparral WTP design drawings, Arizona Canal drawings, utility drawings, Well Site No. 5 reservoir and booster pump station drawings, City Transportation Department and other City department planned improvement drawings (i.e., the pedestrian bridge over the Arizona Canal), roadway improvement and paving drawings, etc. HDR shall also acquire utility drawings from SRP, APS, Qwest, Southwest Gas, Cable TV lines, and

City infrastructure utilities in the area, and roadway drawings of the Concept Design area. To obtain and review this data, HDR will attend approximately two utility coordination meetings. The results of this task will be summarized in an appendix to the Concept Design Report prepared under Task 11. Utility coordination meetings include:

- A. Meeting with City staff, One-Stop Shop, etc. (Performed under Task 2, as identified previously.)
- B. Utility companies to obtain utility drawings and data

5. DEVELOP ADDITIONAL PIPELINE ROUTE MEMORANDA

HDR will develop additional pipeline routes for the finished water South Distribution lines, the Influent Line, and the CAP Distribution Line as requested by the public. Additional pipeline routes to be evaluated are as follows:

South Distribution Lines:

Six additional options will be evaluated for the South Distribution Line and will be presented in four memoranda:

- Option 4 – Hayden Road (Off Pavement) Jackrabbit Road to Granite Reef Road
- Option 5A – Hayden Road (Off Pavement) to Vista Drive – West of Chaparral Park
- Option 5B – Chaparral Park to Vista Drive – East of Chaparral Park
- Option 5C – Hayden Road (Off Pavement) to Camelback Road
- Option 6A – 82nd Street – Adjacent to Chaparral Lake
- Option 6B – 82nd Street – Along 83rd Street

Influent Line:

Two additional options will be evaluated for the Influent Line and will be presented in one memorandum:

- Option 4A – Lincoln Drive to 82nd Street
- Option 4B – Rose Lane to 82nd Street

CAP Finished Water Distribution Line:

One additional option will be evaluated for the CAP Finished Water Distribution Line and will be presented in one memorandum:

- Option 5 – 90th Street

Each route shall consider the locations of possible system tie-ins and shall consider land and right-of-way availability. HDR will coordinate with the City Transportation Department in the consideration of the routes to allow for input on proposed street improvement projects and planned paving projects. The deliverable for this task is a reproducible drawing (scale: 1"=1000') showing the additional alternative pipeline routes and locations of possible system tie-ins. Five copies of the additional memorandum summarizing the results of Tasks 4 and 5 will be prepared and submitted to the City for review. Comments from the City will be used for proceeding with Task 7 and will be incorporated into the Concept Design Report as an appendix prepared under Task 11.

6. HYDRAULIC ANALYSIS

HDR will furnish information to allow the City Water Model Coordinator to run the Hydraulic Water Model for the additional pipeline routes to ascertain if there are any negative hydraulic impacts. HDR will review the output of these computer runs and suggest modifications to the Hydraulic Water Model to reflect the new routes. The City shall be responsible for all computer runs of the Hydraulic Water Model and provide this data to HDR in tabular format. All computer runs shall be provided to HDR in a timely fashion, as determined by the City and HDR. It is anticipated that there will be up to four separate runs of the Hydraulic Water Model to analyze modifications to the water distribution system for the various routes. The deliverable for this task is the summary of the computer runs output data provided by the City for each of the four model runs. The output data shall indicate pipeline segments and their associated flows, velocities and pressures.

7. ANALYSIS OF ADDITIONAL PIPELINE ROUTES

HDR will perform a pros/cons analysis of the additional pipeline routes. The factors that will be used to perform this analysis include total costs of all related distribution lines, influent lines, and CAP distribution line; availability of land and right-of-way, hydraulic impacts, ability to provide water service to the pertinent areas of the various pressure zones, existing PRV impacts, any adverse aesthetics or public relations impacts, impacts on access to homes and businesses, traffic impacts, known cultural resource impacts, identifiable geotechnical impacts, and proximity to electrical power sources. The conclusions of the analysis will result in the identification of the preferred alternative pipeline route for each pipeline in Section 5 of the Concept Design Report.

Memoranda describing each requested option and discussing pros/cons for each will be prepared for the City. The City will review each memorandum and request a preliminary opinion of probable construction cost be prepared and added to the memorandum for those options with more advantages than disadvantages.

8. PRELIMINARY PIMA ROAD 10% PLAN AND PROFILE DRAWINGS

HDR will provide additional design and CADD services required to prepare approximately 30 conceptual plan and profile sheets for 13,840 feet of pipeline along Pima Road from Shea Boulevard to Indian Bend Road for the CAP Finished Water Distribution Line. The deliverable for this task will include 30 conceptual (10%) plan and profile drawings. These plan and profile drawings will include information collected under Tasks 4, 7, and 9.

9. UTILITY POTHOLING COORDINATION

Services under this task include coordination of utility potholing and test hole efforts for the additional pipeline routes for the South Distribution Line and manhole invert identification efforts for the additional pipeline route for the Influent Line identified in Task 5. HDR will coordinate the services of the subsurface subconsultant (TBE Group). The deliverable for this task will be TBE Group's subsurface identification forms and tables.

10. DESIGN COORDINATION (PIMA ROAD)

Services under this task include coordination with the City's Pima Road Buffering Wall/Multi-use Path project consultant. This consultant is presently designing the Pima Road Buffering Wall/Multi-use Path project between Via De Ventura and Inner Circle. As part of their project scope, the City has tasked them with designing about 2,000 linear feet of the CAP Finished Water Distribution Line along Pima Road to avoid having to remove/replace the new buffer wall and the multi-use path when the remainder of the CAP Finished Water Distribution Line is constructed. HDR's deliverable associated with this task is to provide the consultant with steel pipe specifications, coating specifications, two detail drawings and typical trench sections for the 24-inch pipeline.

11. CONCEPT DESIGN REPORT

HDR will summarize the efforts of Tasks 4 through 7 and those efforts originally scoped, in Section 5 of the Concept Design Report. An appendix to the report will contain the additional pipeline route memoranda for the evaluation of the six additional pipeline corridors identified in Task 5. The report will identify the recommended pipeline routes, locations of system connections and pressure zone valves, PRV stations and improvements to existing PRV Stations (as applicable). Preliminary opinion of probable construction costs for the originally scoped Alternatives and their Options shall be included. Also included will be preliminary opinion of probable construction costs added to the additional pipeline route memoranda for those options with more advantages than disadvantages. As originally scoped, HDR will provide five copies of a draft Concept Design Report for review. After receipt of comments from the City, HDR will provide five copies of the final Concept Design Report.

BASIC SERVICES TASKS FOR FINAL DESIGN

1. PROJECT MANAGEMENT AND MEETINGS

This task will provide a firm foundation for overall project management and monitoring. HDR will hold bi-weekly project meetings with the City and prepare monthly progress reports; perform regular budget and schedule monitoring; coordinate with any other related projects dealing with this area; manage subconsultants; and conduct regular team meetings for project coordination. The following itemizes the meetings to be held:

- A. Contract Administrator: HDR will attend bi-weekly meetings with the Contract Administrator to keep the City abreast of the project status. It is intended that the

South System meetings will be held concurrent with the CAP System meetings. A total of 24 bi-weekly project meetings will be required.

- B. Utility Coordination: HDR will organize and attend utility coordination meetings with SRP, APS, ADOT, MCFCD, Qwest, Southwest Gas, cable TV, etc.; South System assumed to be approximately 5 meetings; CAP System assumed to be approximately 5 meetings.
- C. Public Information Meeting: HDR will provide services to allow for public information in the planning process with the goal to achieve consensus on the acceptability of CAP System. It is anticipated that this effort will include one public meeting during the analysis and preparation of the Basis of Design Report. In the public meeting, HDR will assist the City in the preparation of audio-visual aids and handouts for the Public Meeting and present to the public, in a presentation format, the CAP System Alternative and its routing options.

The intent of this public meeting is to receive input from the potentially affected public as to their concerns and desires relative to the CAP System Alternative and its routing options.

2. DATA COLLECTION

Visit the project area with Capital Project Management and Water Resources Department personnel, prior to commencement of the work, to insure an onsite understanding of the nature of all work. Obtain from the City all available maps, records, right-of-way information, GIS data, as-built plans, reports, utility information, review of the City's Water Master Plan and current updates; review of the City's General Plan; and other data pertinent to the work to be performed. It will be the responsibility of HDR to determine and request specific data or information. Provide all necessary research and data collection required to determine and identify all existing project area utilities. Perform potholing, as necessary, to determine and identify existing project area utilities.

3. UTILITY COORDINATION

- A. HDR will coordinate with utility companies and other agencies to incorporate existing and proposed utility facilities into the construction plans. All existing and proposed utilities shall be shown in the plan and profile on the preliminary and final construction plans. HDR will notify and coordinate the utilities in accordance with the Central Arizona Coordinating Committee's Public Improvement Project Guide. Initial contact with utility companies shall be made under the data collection task as record drawings are being collected.
- B. HDR will be responsible for field verifying the horizontal and vertical locations of all utilities within the project limits. Utility base maps prepared by HDR, detailing all existing data, shall be transmitted by registered mail to the utility companies for verification and comments concerning the utility locations. Their comments shall be incorporated into the base maps.

4. **SURVEY** - HDR will perform all necessary aerial and ground survey work to establish horizontal and vertical ground control and to provide topographic information for all existing conditions and features throughout the project limits. All survey work shall be based on City of Scottsdale datum (NAVD 88). Location of existing structures, property lines, drainage ways, and easements will be shown. Existing facilities and structures will be located by survey to support the design of the intake structure, electrical panels, waterline, etc.

5. **GEOTECHNICAL INVESTIGATION**

- A. HDR will perform a geotechnical analysis of the existing conditions. A geotechnical report for the project shall be submitted for use in determination of pipe designs, corrosion protection, and slope stability. The report will be sealed by a registered Engineer in the State of Arizona. The following information will be included in the Geotechnical Report:
1. Vicinity map of project limits.
 2. Plot map-showing location of borings.
 3. Boring logs for approximately 30 borings.
 4. Detailed descriptions of surface and subsurface conditions.
 5. Summary of laboratory tests performed and test results. Typical testing shall include grain size and distribution, moisture, plasticity, compaction, R-value and shrink/swell testing.
 6. Summary of geotechnical recommendations for backfill and bedding criteria for utilities, trench criteria, and borrow material gradation requirements.

6. **PREPARE PLANS, SPECIFICATIONS, AND COST OPINIONS**

The scope and fee estimated for the preparation of design documents for the South System and the CAP System are based upon the recommended waterline routes and intake location as discussed in Section 5 of the Concept Design Report. If the routing of the waterlines and/or the location of the intake are changed or modified, the engineering effort and associated fee may have to be adjusted accordingly.

- A. **Basis of Design Report:** HDR will prepare a 30% Basis of Design Report and 30% plans for the South System and the CAP System. The design documents will be separated into two design packages. The first design package will be the 30% design of the South System. It consists of the 30% design of two new south distribution waterlines, eight (8) system interconnections, piping, one pressure zone valve, hydrants, and accessories for a complete system. The second design package will be the 30% design of the CAP System. It includes the 30% design of the CAP Finished Water Distribution Line, an influent waterline, intake structure, six (6) system interconnections, one pressure zone valve, four (4) PRV stations, modifications to existing PRV No. 23, including piping, electrical power and SCADA availability, hydrants, and accessories for a complete system. In order to verify line diameters, and capacities, system hydraulic model runs and results will be developed by the City based upon input from HDR.

- B. Preliminary Design: The City will use the information developed by HDR (30% Basis of Design Report and 30% plans of the two South Distribution Lines) to select the South Distribution Line alignment for further design development. HDR will prepare separate 60% preliminary design plans and specifications for the South System and the CAP System. The 30% and 60% preliminary design plan and specification packages will include an opinion of probable construction costs.
- C. Design: HDR will prepare separate 90% design plans and specifications for the South System and the CAP System. HDR will make corrections following the 60% preliminary design review. Corrected 90% design plans for each design package will be submitted to the City of Scottsdale, all utility companies, Maricopa County Department of Environmental Services, SRP, and other governmental agencies. The 90% preliminary design plan and specification package will include an updated opinion of probable construction costs.
- D. Final Design: HDR will prepare separate 100% final design plans and specifications for the South System and the CAP System. The 100% final plans will be printed on mylar and will be submitted to the City of Scottsdale for approval and signature. HDR will also submit an electronic copy (CD) in AutoCad format of the complete design, calculations, and other pertinent design information. The 100% final design plan and specification packages will include an opinion of probable construction costs.

The plan and profile drawings will be drawn to a horizontal scale of 1-inch = 20 feet. The following plan sheets are anticipated for the project:

South System (Option 5B (Hayden Road (Off Pavement) to Vista Drive – East of Chaparral Park)):

G-1	Cover Sheet	C-12	Plan and Profile
G-2	Index Sheet	C-13	Plan and Profile
G-3	General Notes	C-14	Plan and Profile
G-4	Quantity Summary	C-15	Plan and Profile
G-5	Details	C-16	Plan and Profile
G-6	Details	C-17	Plan and Profile
G-7	Details	C-18	Plan and Profile
C-1	Plan and Profile	C-19	Plan and Profile
C-2	Plan and Profile	C-20	Plan and Profile
C-3	Plan and Profile	C-21	Plan and Profile
C-4	Plan and Profile	C-22	Plan and Profile
C-5	Plan and Profile	C-23	Plan and Profile
C-6	Plan and Profile	C-24	Plan and Profile
C-7	Plan and Profile	C-25	Plan and Profile
C-8	Plan and Profile	C-26	Plan and Profile
C-9	Plan and Profile	C-27	Plan and Profile
C-10	Plan and Profile	C-28	Plan and Profile
C-11	Plan and Profile		

South System (Option 5C (Hayden Road (Off Pavement) to Camelback Road)):

G-1	Cover Sheet	C-12	Plan and Profile
G-2	Index Sheet	C-13	Plan and Profile
G-3	General Notes	C-14	Plan and Profile
G-4	Quantity Summary	C-15	Plan and Profile
G-5	Details	C-16	Plan and Profile
G-6	Details	C-17	Plan and Profile
G-7	Details	C-18	Plan and Profile
C-1	Plan and Profile	C-19	Plan and Profile
C-2	Plan and Profile	C-20	Plan and Profile
C-3	Plan and Profile	C-21	Plan and Profile
C-4	Plan and Profile	C-22	Plan and Profile
C-5	Plan and Profile	C-23	Plan and Profile
C-6	Plan and Profile	C-24	Plan and Profile
C-7	Plan and Profile	C-25	Plan and Profile
C-8	Plan and Profile	C-26	Plan and Profile
C-9	Plan and Profile	C-27	Plan and Profile
C-10	Plan and Profile	C-28	Plan and Profile
C-11	Plan and Profile		

Intake Design (CAP System):

G-1	Cover Sheet	S-3	Site & Foundation Plan
G-2	Index Sheet	S-4	Typical Sections & Details
C-1	General Notes	S-5	Typical Sections & Details
C-2	Intake Plan	S-6	Typical Sections & Details
C-3	Grading + Drainage	S-7	Typical Sections & Details
C-4	Details	E-1	Legend
C-5	Details	E-2	Site Plan
M-1	Intake Plan	E-3	Single-line, Load Calcs, Panel Schedule
M-2	Sections and Flow Meter Details	E-4	Control One-Line
M-3	Intake Screen and Misc. Details	E-5	Details
M-4	Micro Screen and Misc. Details	E-6	Details
M-5	Details	I-1	P&ID Legend
M-6	Details	I-2	P&ID Legend
S-1	General Notes	I-3	Details
S-2	General Notes and Abbrev.		

Influent Line (CAP System):

G-1	Cover Sheet	C-4	Plan and Profile
G-2	Index Sheet	C-5	Plan and Profile

G-3	General Notes	C-6	Plan and Profile
G-4	Quantity Summary	C-7	Plan and Profile
G-5	Details	C-8	Plan and Profile
G-6	Details	C-9	Plan and Profile
C-1	Plan and Profile	C-10	Plan and Profile
C-2	Plan and Profile		
C-3	Plan and Profile		

CAP Finished Water Distribution Line (CAP System):

G-1	Cover Sheet	C-29	Pump Station Plan
G-2	Index Sheet	C-30	Pump Station Plan
G-3	General Notes	C-31	Pump Station Plan
G-4	Quantity Summary	C-32	Pump Station Plan
G-5	Details	C-33	Pump Station Plan
G-6	Details	C-34	Pump Station Plan
G-7	Details	C-35	Pump Station Plan
G-8	Details	C-36	Pump Station Plan
C-1	Plan and Profile	C-37	Pump Station Plan
C-2	Plan and Profile	C-38	Plan and Profile
C-3	Plan and Profile	C-39	Plan and Profile
C-4	Plan and Profile	C-40	Plan and Profile
C-5	Plan and Profile	C-41	Plan and Profile
C-6	Plan and Profile	C-42	Plan and Profile
C-7	Plan and Profile	C-43	Plan and Profile
C-8	Plan and Profile	C-44	Plan and Profile
C-9	Plan and Profile	C-45	Plan and Profile
C-10	Plan and Profile	C-46	Plan and Profile
C-11	Plan and Profile	C-47	Plan and Profile
C-12	Plan and Profile	C-48	Plan and Profile
C-13	Plan and Profile	C-49	Plan and Profile
C-14	Plan and Profile	C-50	Plan and Profile
C-15	Plan and Profile	C-51	Plan and Profile
C-16	Plan and Profile	C-52	Plan and Profile
C-17	Plan and Profile	C-53	Plan and Profile
C-18	Plan and Profile	C-54	Plan and Profile
C-19	Plan and Profile	C-55	Plan and Profile
C-20	Plan and Profile	C-56	Plan and Profile
C-21	Plan and Profile	C-57	Plan and Profile
C-22	Plan and Profile	C-58	Plan and Profile
C-23	Plan and Profile	C-59	Plan and Profile
C-24	Plan and Profile	C-60	Plan and Profile
C-25	Plan and Profile	M-1	PRV
C-26	Plan and Profile	M-2	PRV and Details
C-27	Pump Station Plan	M-3	PRV and Details
C-28	Pump Station Plan		

7. BID SERVICES

- A. Prepare Addenda: Prepare and submit sealed addenda, during the bidding phase of each design package.
- B. Pre-Bid Conference: Attend the pre-bid conference and assist in answering questions pertaining to the project that arise at this time.
- C. Interpretation of Construction Documents: Answer bidder's questions pertaining to the construction documents during the bidding phase of each design package.
- D. Attend Bid Opening: Attend the bid openings and make recommendation for award of each design package.
- E. This task does not include the preparation of conformed documents for each design package. If these services are requested by the City, an upper limit amount will be established and the engineering hours and rates will be invoiced on the basis of cost plus 12 percent profit.

ALLOWANCE TASKS FOR FINAL DESIGN

Allowance tasks are considered those tasks that are not necessarily well defined at this time. The actual scope of service for requested allowance tasks will be negotiated with the City prior to authorization of the use of the allowance task. The fee for each of these tasks is considered an upper limit and will be invoiced on the basis of cost plus 12 percent profit.

- 8. **LEGAL DESCRIPTIONS** - HDR will provide boundary surveys, legal descriptions and exhibits for public right-of-way and easements that may be required for the successful completion of this project. Title reports will be provided by the City. The City will obtain the necessary right-of-way and easements prior to the project being bid for construction. Fifteen boundary surveys and legal descriptions are assumed to be required. Where additional boundary surveys and legal descriptions are required in order to secure additional right-of-way and easements, additional compensation may be necessary.
- 9. **POTHOLING** – HDR will be responsible for scheduling the location and number of potholes with the affected utility company, resolving potential conflicts and shall pursue resolution of all conflicts with the utility until acceptable solutions are designed. The City's maintenance crews will not be available to perform any potholing. HDR will be responsible for providing underground utility locating services utilizing an air vacuum method of excavation that produces a hole in the pavement not greater than 12 inches in diameter. The number and location of potholes required for design shall be reviewed by the City's Contract Administrator prior to commencement of activities. Fees for potholing shall be based upon a lump sum cost for each pothole, which shall include the cost for barricading, securing permits/permission from all concerned agencies, pavement restoration, report preparation, recording the thickness of the asphalt when the borings occur in the existing paved roadway, and other incidental items. To minimize traffic congestion and barricading, all potholing shall occur in the shortest time frame possible. It is assumed that the following will be required:
 - A. Vacuum Excavation Potholing:

1. Traceable utilities to a maximum depth of eight feet. Estimated at 150 potholes.
 2. Untraceable utilities to a maximum depth of eight feet. Estimated at 150 potholes.
- B. Manhole Surveys: Horizontal and vertical location of existing sanitary sewer and storm sewer manholes. Estimated at 145 manholes.

Where additional potholes are required in order to provide additional design information, additional compensation may be necessary.

10. **PERMITS** - HDR will determine if the following environmental and regulatory issues are required for this project and, if so, HDR will prepare and complete evaluations, permit applications, surveys, and reports. Based upon information available and the recommendations made in the Concept Design Report, a US Army Corps of Engineers, Section 404 Process Permit, an Archaeological Report / Biological Evaluation, and a Species Specific Survey are not required. If the routing of the waterlines under this scope of services are modified, permits and reports required and the engineering effort to secure these permits and prepare these reports may have to be adjusted accordingly.

- A. Section 401 – Water Quality
1. A Section 401 permit may be required if groundwater is encountered during the design of this project. Engineering efforts required to secure this permit are estimated and included in Exhibit B. These engineering hours may require adjustment and additional compensation may be required.
- B. Cultural Resources (Also required by SRP for Approval to Construct Permit)
1. State Historic Preservation Office (SHPO) Review.
 2. Site / Field review.
 3. Preparation of Cultural Resources Report.

11. **SPECIALTY MEETINGS** – Specialty meetings are considered those meetings not included under Task 1. Engineering efforts required to attend these specialty meetings and prepare necessary presentation materials and graphics are estimated and included in Exhibit B.

- A. Public Open House Meetings: HDR shall organize and attend up to four public open house meetings, to communicate the scope and impact of the project to the affected public; South System assumed to be two meetings; CAP System assumed to be two meetings.
- B. Additional Public Informational Meetings: In order to address public issues outside of the public open house meeting format, three additional public informational meetings will be held; one for the South System and; two for the CAP System.

- C. City Council Meeting: HDR shall organize and attend up to two City Council Meetings to communicate the scope and impact of the project to the City Council; South System assumes one meeting; CAP System assumes one meeting.
- D. Development Review Board (DRB): HDR shall attend and prepare necessary presentation materials and graphics required for presentation at the DRB and attend up to four City meetings, if necessary, to obtain the necessary approvals.
- E. Environmental and Regulatory Issues: HDR shall attend and prepare necessary presentation materials and graphics required for presentation at the Corps of Engineers, SRP, and ADOT and attend meetings, as necessary, to obtain the necessary approvals. This is estimated to be limited to three meetings.

12. **ADDITIONAL SERVICES** - The scope of service for requested additional services will be negotiated with the City prior to authorization of the use of this allowance task. The fee for each of these tasks will be considered as an upper limit amount and will be invoiced on the basis of cost plus 12 percent profit. The City has requested that an upper limit of approximately \$62,000 be established at this time to cover those services considered as additional services. Depending upon the scope and extent of additional services, the engineering hours associated with this upper limit amount may require adjustment and additional compensation may be required.

CITY COUNCIL REPORT



MEETING DATE: 04/14/2003

ITEM No.

17

GOAL: Fiscal Management

SUBJECT

Contract for Legal Services in connection with City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348.

REQUEST

Adopt Resolution No. 6280 authorizing the Mayor to execute Contract No. 2001-038A-COS, an outside counsel contract renewal in a maximum amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00) with the law firm of GRAHAM & ASSOCIATES, LTD. for legal services regarding representation of the City of Scottsdale in the litigation entitled City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.

Related Policies, References:

Resolution No. 6280

BACKGROUND

This case involves a condemnation proceeding initiated by the City to acquire 181 platted and engineered lots (143 acres) owned by Glenalden Homes L.L.C. located in a master-planned residential development in north Scottsdale known as Troon North. The proceedings were initiated by the City to condemn Glenalden's property for inclusion within the McDowell Sonoran Preserve established by the City for a park for desert and mountain preservation.

Trial was held in the second half of February and into March 2003. The issues were complex and required extensive trial preparation and in-trial presentation.

The property owner sought a jury verdict in excess of \$26 Million plus interest. The City's value was approximately \$9 Million. The verdict was for \$15 Million as compensation for the platted property taken. Post-trial motions will be filed by the City relating to several legal issues at trial and the amount of the verdict.

The case has been handled by Graham & Associates since prior to its commencement. On July 22, 1999 a contract in the amount of \$20,000.00 was entered into with Graham & Associates, Ltd. to commence the action and obtain possession of the property before the owner removed native vegetation. On July 19, 2000 the Council approved a renewal contract in the amount of \$60,000.00. By April, 2001 it had become apparent that this was the largest condemnation action in the State and that legal fees could accrue at the rate of \$50,000.00 or more per month. Accordingly, on April 30, 2001 the Council approved a renewal in the amount of \$200,000.00. Additional renewals in the amount of \$200,000.00 each were approved by the Council on November 26, 2001, June 4, 2002,

Action Taken _____

September 9, 2002 and January 6, 2003. This last authorized amount is close to being exhausted with extensive trial preparation and trial conducted in February and March 2003.

**ANALYSIS &
ASSESSMENT**

On July 22, 1999 the City contracted with the law firm of GRAHAM & ASSOCIATES, LTD. to commence City of Scottsdale v. Glenalden Homes, L.L.C., et al., to acquire real property by eminent domain necessary for the McDowell Sonoran Preserve and to provide specialized and expert legal services with respect to that action. The case involves an extremely complex legal and factual issues and continues to be the largest condemnation action in the State of Arizona with an amount at issue in excess of \$15,000,000.00. Current expenditures are approaching the previously authorized amounts. This new contract will allow the firm to continue to represent the City's interests in post-trial proceedings. Costs of appeal, if authorized, are not included.

The proceedings were initiated by the City to condemn Glenalden's property for inclusion within the McDowell Sonoran Preserve established by the City for a park for desert and mountain preservation. Payment of legal fees does not involve a public outreach process.

RESOURCE IMPACTS

The contract will enable the City to continue receiving expert legal services with respect to this matter. This contract will be paid from funds reserved for the acquisition of real property with McDowell Sonoran Preserve study boundary. This contract will be paid from funds available in capital account number 52140.

**OPTIONS & STAFF
RECOMMENDATION**

The scope of this litigation requires resources beyond those available to the City in-house. In addition, aside from the fact that GRAHAM & ASSOCIATES, LTD. are providing top quality representation, it would be extremely financially inefficient to seek other representation at this point in the litigation. Consequently, the only alternative to continuing this contract would be to settle this action.

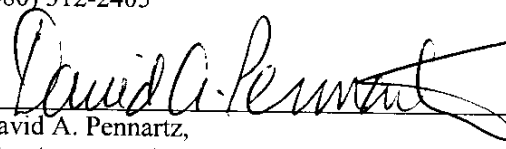
RESPONSIBLE DEPT(S)

General Government, City Attorney's Office – Civil Division

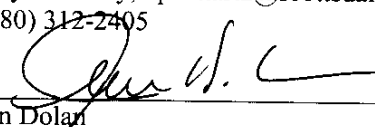
STAFF CONTACT(S)

David A. Pennartz City Attorney, dpennartz@scottsdaleaz.gov
(480) 312-2405

APPROVED BY


David A. Pennartz,
City Attorney, dpennartz@scottsdaleaz.gov
(480) 312-2405

3/27/03
Date


Jan Dolan
City Manager, jdolan@ci.scottsdale.az.us
(480) 312-2422

3/27/03
Date

ATTACHMENTS

1. Resolution No. 6280
2. Contract No. 2001-038A-COS

(Continued)

RESOLUTION NO. 6280

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO CONTRACT FOR LEGAL SERVICES, NO. 2001-038A-COS, WITH THE LAW FIRM OF GRAHAM & ASSOCIATES, LTD.

WHEREAS, the City Attorney's Office has previously contracted with GRAHAM & ASSOCIATES, LTD. for legal services in connection with City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Case No. CV99-13348, brought to acquire real property necessary for the McDowell Sonoran Preserve; and

WHEREAS, the City of Scottsdale desires that GRAHAM & ASSOCIATES, LTD. continue to provide legal services in connections with City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Case No. CV99-13348;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. Mayor Mary Manross is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Contract for Legal Services, No. 2001-038A-COS, an agreement between the City of Scottsdale and the law firm of GRAHAM & ASSOCIATES, LTD. for the provision of legal services.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Scottsdale this 15th day of April, 2003.

ATTEST:

CITY OF SCOTTSDALE, an
Arizona municipal corporation

By: _____
Sonia Robertson,
City Clerk

By: _____
Mary Manross,
Mayor

APPROVED AS TO FORM:

By: David A. Pennartz
David A. Pennartz,
City Attorney

**CONTRACT FOR LEGAL SERVICES
CITY OF SCOTTSDALE
City Attorney's Office**

THIS CONTRACT is made and entered into on this 15th day of April, 2003, by and between the **City of Scottsdale**, a municipal corporation, hereinafter called **CITY**, and the law firm of **Graham & Associates, LTD** hereinafter called **COUNSEL**.

CITY having determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to assist in connection with **City of Scottsdale v. Glenalden Homes L.L.C., et al., Superior Court Case No. CV 99-13348, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.**

CITY having satisfied itself as to the qualifications of COUNSEL as named above.

NOW, THEREFORE, it is agreed between the parties as follows:

1. **Scope of Service and Representation.** COUNSEL agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court, in representing the City. Such legal services shall be carried out in cooperation with the City Attorney's Office who shall at all times be apprised of the status of all matters. No major decisions regarding the resolution of the legal issues or litigation, in whole or in part, shall be made without the prior approval of the City Attorney's Office. All offers of compromise made by plaintiff(s) shall be promptly transmitted to CITY through its City Attorney's Office, together with COUNSEL'S recommendations. City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter-offer. No appeals will be taken from judgments in any litigation without prior approval of City, acting through its City Attorney's Office.
2. **Advice and Status Reporting.** COUNSEL shall provide CITY with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as COUNSEL consider appropriate. COUNSEL shall provide copies of all pleadings and other documents prepared by COUNSEL, including research memoranda prepared by COUNSEL, unless they have been otherwise provided to the City Attorney's Office.
3. **Compensation.** CITY agrees to pay COUNSEL for services rendered hereunder as follows:
 - A. Two Hundred Dollars (\$200.00) per hour for M. Graham.
 - B. One Hundred and Seventy-Five Dollars (\$175.00) per hour for J. Nicoletti-Jones; W. McDonald and K. Patterson.
 - C. One Hundred and Fifty Dollars (\$150.00) per hour for D. Rohwer
 - D. One Hundred and Twenty-Five Dollars (\$125.00) per hour for Jr. Associates.

- E. One Hundred Dollars (\$100.00) per hour for L. Fain; C. Vallarelli; C. Lysle.
- F. Seventy-Five Dollars (\$75.00) per hour for D. Lewerke,; K. Harper and M. Hoffner.

All services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. CITY shall not be billed for use of COUNSEL'S "runners", but may be billed for messenger service required when COUNSEL'S runner is not available. Total money paid under this contract **shall not exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00)**. Fees and expenses shall be billed on a monthly basis and paid by CITY within forty-five (45) days.

4. Travel. Approval for travel shall be obtained through the City Attorney's Office prior to departure. Travel time may be billed to CITY, with the exception of travel time to CITY to meet with CITY representatives or the City Council. "Reasonable expenses" means expenses not exceeding one hundred eighty five dollars (\$185.00) per night for hotel rooms, seventy-five dollars (\$75.00) per person per day for meals including gratuity, and for the rental charges of the most economical type of rental car available. Where possible, COUNSEL and consultants and experts and subcontractors shall stay at hotels that charge a government rate. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to CITY except when a rental car is used out-of-state.

5. Reimbursement for Expenses. All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. All copying charges shall be billed at no more than fifteen cents (\$.15) per page. To the extent practical, large photocopying tasks will be sent out to an outside copy service in an effort to further reduce photocopying costs. Outgoing faxes shall be billed for actual long distance charges incurred, not on a per page basis. On-line database retrieval charges (i.e. Lexis, Westlaw, CompuServe, Dialogue, etc.) shall be billed at actual cost.

6. Billing Procedures. In addition to the billing procedures set forth elsewhere in this Contract, COUNSEL shall follow these billing procedures:

A. "Unit billing" shall not be done. COUNSEL shall bill only for actual time spent on a task, and each task shall be itemized (e.g. tel. to opposing counsel (.2); extended tel. to Mr. Smith (.3); prepare motion to continue (.3).

B. Secretarial, word processing or other overtime shall not be billed (e.g., preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.

C. Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to CITY. Work on this matter billed by attorneys not listed must be approved by the City Attorney's Office in advance.

D. All consultants, experts and subcontractors engaged to provide services to COUNSEL in the performance of this agreement, and the use and extent of those services, shall be approved by the City Attorney's Office prior to them providing the services. Payment of their expenses will be subject to the same terms as paragraphs 4 and 5 above.

E. COUNSEL will submit monthly billings for services rendered and expenses incurred, which shall be paid by the City Attorney's Office. Each bill shall also contain, in addition to information required elsewhere in this Contract: 1) fees and costs incurred in the preceding month; 2) the cumulative total of fees and costs to date; 3) the City Attorney's Office contract number 2003-009 and; 4) the unbilled amount remaining on the contract. COUNSEL will use its best efforts to inform the City Attorney's Office eight weeks prior to COUNSEL billing the final fees and costs authorized under this contract. CITY will pay no fees incurred over and above the contract amount without prior authorization from CITY.

7. Maintenance of Records. In compliance with CITY'S standard procedure, all work performed in connection with this Contract shall be subject to audit. COUNSEL shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a particular lawsuit, and to make such materials available at their offices at all reasonable times during the Contract period and for at least three (3) years from the date of final payment for inspection by CITY or any authorized representatives of CITY, and copies thereof shall be furnished, if requested, at CITY'S expense.

8. Conflict of Interest. COUNSEL warrants and covenants that COUNSEL presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, COUNSEL shall promptly notify CITY of the existence of such conflict of interest, so that CITY may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to COUNSEL on behalf of the CITY, as are not adverse to the CITY's legal interests in his professional judgment. Otherwise, COUNSEL shall be free to dispose of such portion of their entire time, energy and skill as are not required to be devoted to CITY in such manner as they see fit and to such persons, firms or corporations as they deem advisable so long as no conflict of interest exists.

9. Reporting Requirements

A. Within sixty (60) days of receipt of a case, or at the time disclosure statements are first filed, whichever is sooner, COUNSEL shall provide CITY with an initial written evaluation containing the following:

1. A summary of the case's facts and issues;
2. An evaluation of the potential exposure;
3. An outline of the course of action COUNSEL intends to pursue in the case (e.g., names and/or categories of witnesses to be interviewed or deposed; experts to be retained; motions to be filed; etc.);

4. An estimate of the cost to defend the case through trial;
5. A cost/benefit analysis, including recommendations as to early settlement or offers of judgment; and,
6. The name of the attorney who will be primarily responsible for handling the case, and the names of others who will assist that person.

10. Additional Investigation. Whenever additional investigation is deemed desirable by COUNSEL and can be provided by use of non-attorney investigators, COUNSEL shall notify CITY through the City Attorney's Office of such need, and CITY may elect, at its option, to conduct such investigation. In this event, CITY shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

11. Termination. CITY may terminate this Contract upon giving ten (10) days written notice for convenience or cause. Any default by COUNSEL, if COUNSEL fails to comply with any of the conditions of this Contract, or services which provide unsatisfactory performance as judged by the Contract Administrator, and failure to provide CITY, upon request, reasonable assurance of future performance, shall be causes allowing CITY to terminate this Contract. In the event of termination for cause, CITY shall not be liable to COUNSEL for any amount, and COUNSEL shall be liable to CITY for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular lawsuit or lawsuits to which it applies, and any lawsuit not particularly specified shall continue to be handled by COUNSEL and, as to those, this Contract will continue in effect; provided, however, the right is retained by CITY to terminate services on any lawsuit by notifying COUNSEL in writing.

12. Notices. When notice or correspondence is required to be sent to CITY, it shall be sent to the Contract Administrator named below:

City Attorney's Office
City of Scottsdale
3939 Drinkwater Blvd.
Scottsdale, Arizona 85251
Attn: David A. Pennartz

Should the Contract Administrator change, CITY will notify COUNSEL in writing.

13. Indemnification For Liability and Professional Liability

To the fullest extent permitted by law COUNSEL, its successors, assigns and guarantors, shall defend, indemnify and hold harmless CITY, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any negligent, or intentional actions, acts, errors, mistakes or omissions caused in whole or part by COUNSEL relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed

by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of COUNSEL'S and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

14. Insurance Representations and Requirements

General: Counsel agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of COUNSEL, shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to CITY. Failure to maintain insurance as specified may result in termination of this Contract at CITY'S option.

No Representation of Coverage Adequacy: By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect COUNSEL. CITY reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve COUNSEL from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the CITY, unless specified otherwise in this Contract.

Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

Use of Subcontractors: If any work under this agreement is subcontracted in any way, COUNSEL shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting CITY and COUNSEL. COUNSEL shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

Evidence of Insurance: Prior to commencing any work or services under this Contract, COUNSEL shall furnish CITY with Certificate(s) of Insurance, or formal endorsements as required by

this Contract, issued by COUNSEL'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonable rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the cited policies expire during the life of this Contract, it shall be COUNSEL'S responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions:

1. CITY, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Commercial General Liability, b) Auto Liability and c) Excess Liability-Follow Form to underlying insurance as required.
2. COUNSEL'S insurance shall be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance waive rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by COUNSEL under this contract.
4. Certificate shall cite 30-day advance notice of cancellation provision. If standard ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

Required Coverage

Commercial General Liability: COUNSEL shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Complete Operations Annual Aggregate, and a \$1,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Professional Liability: If the Contract is the subject of any professional services or work, or if COUNSEL engages in any professional services or work adjunct or residual to performing the work under this Contract, COUNSEL shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by COUNSEL, or anyone employed by COUNSEL, or anyone for whose acts, mistakes, errors and omissions COUNSEL is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims.

In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and COUNSEL shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

Vehicle Liability: COUNSEL shall maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on COUNSEL'S owned, hired, and non-owned vehicles assigned to or used in the performance of the COUNSEL'S work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Workers' Compensation Insurance: COUNSEL shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of COUNSEL'S employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

15. Choice of Law. This Contract shall be governed and interpreted according to the laws of the State of Arizona.

16. Whole Agreement. This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

17. Amendments. Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Should there be a change in the Contract Administrator, however, CITY will only need to notify COUNSEL in writing.

18. Non-Assignment. Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City Attorney.

19. Cancellation. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

20. Independent Contractor Status. The services COUNSEL provides under the terms of this Contract to CITY are that of an independent contractor, not an employee. CITY will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

Withholding of income tax is not deducted from contractual payments. As a result of this, COUNSEL may be subject to I.R.S. provisions for payment of estimated income tax.

Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject COUNSEL to a penalty.

21. Severability. Should any part of this agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

April IN WITNESS WHEREOF, the City of Scottsdale, by its Mayor this 15th day of _____, 2003.

**City of Scottsdale, a
municipal corporation**

By: _____
Mary Manross, Mayor

Graham & Associates, LTD

By: Michael A. Cohen
Its: President

ATTEST:

Sonia Robertson, City Clerk

APPROVED AS TO FORM:

David A. Pennartz
David A. Pennartz, City Attorney

Note to Attorneys: Remember to send along a copy of your Certificate of Insurance with the Contract for Legal Services.

CITY COUNCIL REPORT



MEETING DATE: 04/15/2003 ITEM No. 18 GOAL: Transportation

SUBJECT

Acquire right-of-way/easements (ROW) for the widening of 96th Street from Shea Boulevard to Thunderbird Road.

REQUEST

ADOPT Resolution No. 6285 authorizing the acquisition of various rights-of-way and easements from property located at 9598 E. Cactus Road, owned by Allan and Julie La Magna, at the total appraised value of \$117,611 plus approximately \$1,500 in closing costs for the 96th St. Improvements CIP project (Shea – Thunderbird Rd).

Related Policies, References:

- a. Resolution No. 6253 authorizing the initiation of negotiations for the acquisition of 16 various parcels of ROW from nine property owners for the 96th St. Improvements project (Shea-Thunderbird Rd).
- b. Cactus Corridor Equestrian Overlay District
- c. Bond 2000 CIP Project

BACKGROUND

The 96th Street Improvements include design of a new roadway and multi-use path improvements for 96th Street from Shea Boulevard to Thunderbird Road. The proposed improvements were reviewed with the community through a series of four public meetings held between July 2001 and May 2002. The Transportation Commission voted to approve the final scope of these improvements on May 16, 2002. The goal of this project is to improve traffic flow, provide added safety for both pedestrians and vehicles, reduce delay times at intersections, and improve non-motorized circulation.

On December 13, 2002, Dennis L. Lopez & Associates, LLC, appraised all of the various rights-of-way and easements needed for the project. The appraiser estimated the combined value of the 16 parcels of ROW at about \$262,000. On January 31, 2003, the review appraiser, Sell & Associates, Inc., concurred with the primary appraiser's conclusions. Copies of the appraisals and review appraisals are on file in the City Clerk's Office.

On February 18, 2003, Council adopted Resolution No. 6253 authorizing the initiation of negotiations for the acquisition of 16 various parcels of ROW and easements required for this project from nine property owners. Resolution No. 6253 also authorized a maximum limit of \$5,000 per parcel for the administrative purchase of necessary ROW and easements. Any purchase agreements over \$5,000, or those under \$5,000, but negotiated at more than the appraised value would be presented to City Council for review and approval.

Action Taken _____

ANALYSIS & ASSESSMENT

Resolution No. 6253 included the acquisition of the following parcels from the La Magna's whose property is located at the northwest corner of 96th Street and Cactus Road. Attachment No. 2 is an aerial photo showing the various property areas required for the 96th Street improvements at the Cactus Road intersection.

<u>Type</u>	<u>Size</u>	<u>Appraised Value</u>
Roadway & Public Utility Esmt.	6,047 s.f.	\$36,088
Landscape, Public Utility Easement, Slope & Path Easement	1,510 s.f.	\$ 9,022
Drainage Easement	797 s.f.	\$ 2,379
Sight Triangle Easement	312 s.f.	\$ 936
Landscape, Public Utility, Slope & Trail Easement	11,593 s.f.	<u>\$69,186</u>
Total Acquisition Costs:		<u>\$117,611</u>

On March 25, 2003, the City sent an offer letter to Mr. & Mrs. La Magna to purchase the ROW and easements from the parcel for 96th Street subject to City Council approval. On April 1, 2003, the La Magna's accepted the City's offer to purchase the ROW for the appraised value (Attachment No. 3).

Community involvement:

Meetings will continue to be held with property owners impacted by the project and interested parties along the corridor. Community involvement will be especially important as this project moves forward.

RESOURCE IMPACTS

Available funding:

Adoption of Resolution No. 6285 will result in an expenditure of \$117,611 plus closing costs of approximately \$1,500 from CIP Account No. S9903, 96th Street – Shea Blvd to Sweetwater.

Future Budget Implications:

It is estimated that it will cost about \$105,000 to acquire the remaining seven parcels of ROW and easements. The estimated construction cost of the 96th Street improvements is \$5,500,000. Additional landscape maintenance costs after construction of this project will be less than \$1,000 per year.

OPTIONS & STAFF RECOMMENDATION

Option A:

Adopt Resolution No. 6285, which will allow the City to acquire the ROW and easements for the appraised value from a willing seller, which will allow construction of improvements for this portion of 96th Street.

Option B:

Do not adopt Resolution No. 6285, which would delay any improvements to this two-mile segment of 96th Street and its intersection with Shea Boulevard. Traffic issues in this area will continue to increase with delays at the 96th Street and Shea intersection, and bicycle system improvements would also be delayed.

Recommended approach:

Option A - Adopt Resolution No. 6285, which will allow the City to acquire the property rights for the appraised value in order to move forward with this acquisition and proceed with the project.

Proposed Next Steps:

Acquisition of the remaining rights-of-way and easements will continue. Initiation of construction of the 96th Street project is targeted for the latter half of 2003.

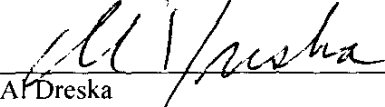
RESPONSIBLE DEPT(S)

Municipal Services, Capital Project Management

STAFF CONTACT(S)

Marek Urbanek, Project Manager, (480) 312-2563, murbanek@ci.scottsdale.az.us
Rhonda Thomas, Right of Way Agent, (480) 312-7847,
Rthomas@ci.scottsdale.az.us

APPROVED BY


Al Dreska
Municipal Services General Manager
adreska@ci.scottsdale.az.us (480) 312-5555

4/02/03
Date


Roger Klingler
rklingler@ci.scottsdale.az.us (480) 312-5830

4/02/03
Date

ATTACHMENTS

1. Resolution No. 6285
2. Aerial Photo of ROW to be Acquired
3. Acceptance of Offer by La Magna
4. City Council Resolution No. 6253

RESOLUTION NO. 6285

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ACQUISITION OF REAL PROPERTY INTERESTS IN CERTAIN REAL PROPERTIES ALONG 96TH STREET FROM SHEA BOULEVARD TO THUNDERBIRD ROAD NECESSARY FOR THE CONSTRUCTION OF IMPROVEMENTS TO 96TH STREET BETWEEN SHEA BOULEVARD AND THUNDERBIRD ROAD.

BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

SECTION 1. That it is deemed necessary and essential as a matter of public welfare that certain real property interests located at 9598 E. Cactus Road, as described in Exhibit "A" attached hereto, (hereinafter the "Real Property") be acquired for the construction of public street improvements along 96th Street between Shea Boulevard and Thunderbird Road.

SECTION 2. That the City Manager or her designee is hereby directed and authorized to purchase the necessary interests in that portion of the Real Property located at 9598 E. Cactus Road at the price of \$117,611, plus closing costs, estimated to be approximately \$1,500.

SECTION 3. That the duly authorized disbursing agents of the City of Scottsdale are hereby authorized and directed to pay all sums that may be necessary to complete said purchase.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 15th day of April 2003.

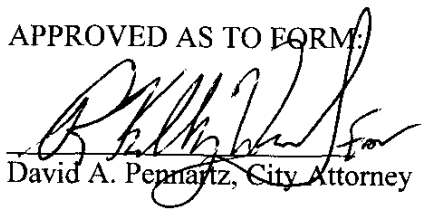
CITY OF SCOTTSDALE,
An Arizona municipal corporation

Mary Manross, Mayor

ATTEST:

Sonia Robertson, City Clerk

APPROVED AS TO FORM:



David A. Pennartz, City Attorney

LEGAL DESCRIPTION
ROADWAY RIGHT OF WAY
96TH STREET NORTH OF CACTUS ROAD



That portion of the South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18, Township 3 North, Range 5 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the southeast corner of said Section 18;

thence North 0°02'23" West along the East line of said southeast quarter of Section 18, a distance of 330.16 feet to the northeast corner of said South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18;

thence North 89°59' 12" West along the North line of said South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18, a distance of 11.70 feet to the northeast corner of the La Magna Property, described in Instrument Number 97-0713022, records of said County and the POINT OF BEGINNING;

thence departing said North line South 5°00'33" West along the easterly line of said La Magna property 303.32 feet to a point that lies 28.00 feet North of the South line of the southeast quarter of said Section 18;

thence North 89°59' 12" West parallel with and 28.00 feet North of said South line 6.62 feet to a point that is 45.00 feet West of the East line of said southeast quarter of said Section 18;

thence North 0°02'23" West parallel with and 45.00 feet West of said East line of the southeast quarter of Section 18, a distance of 302.07 feet to the North line of said South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18;

thence South 89°59' 12" East along said North line 33.30 feet to the POINT OF BEGINNING.

Containing 6047 square feet or 0.1388 acres, more or less.

PART OF THE SE 1/4 OF SEC.18, T.3N., R.5E.,
G.&S.R.B.&M., MARICOPA COUNTY, ARIZONA

NE COR. OF S1/2 OF
S1/2 OF E1/2 OF SE1/4 OF
SE1/4 OF SEC.18

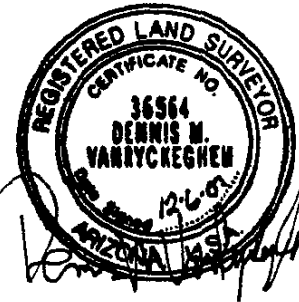
NE COR.
PROP. L5 L1

RIGHT OF WAY
INST.NO. 88-568890

INST. NO.
97-0713022

EASTERLY LINE
LA MAGNA PROP.

96TH ST



LA MAGNA PROPERTY
INSTRUMENT 97-0713022
APN 217-24-023R

E.LINE SE1/4
SEC.18

LINE TABLE

L1	N89°59'12"W	11.70'
L2	S05°00'33"W	303.32'
L3	N89°59'12"W	6.62'
L4	N00°02'23"W	302.16'
L5	S89°59'12"E	33.30'

NEW
R/W EXIST
R/W 45'
R/W

N 0°02'23" W 330.16'

L4

L2

L3

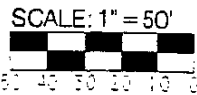
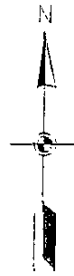
CACTUS ROAD

28'
R/W

S.LINE SE1/4
SECT.18

SE COR.
SEC.18

45'
R/W



ROADWAY RIGHT OF WAY
96TH STREET NORTH OF CACTUS ROAD

CITY OF SCOTTSDALE
INSPECTION SERVICES DEPARTMENT
LAND SURVEY GROUP

APN 217-24-023R SURVEYED BY D.V. DRAWN BY D.V. DATE 12/06/01 SHEET 2 OF 2

LEGAL DESCRIPTION

LANDSCAPE, PUBLIC UTILITY, SLOPE AND TRAIL EASEMENT

CACTUS ROAD WEST OF 96TH STREET

That portion of the South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18, Township 3 North, Range 5 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the southeast corner of said Section 18;

thence North 89°59'12" West along the South line of said southeast quarter of Section 18 a distance of 50.00 feet;

thence departing said South line North 0°02'23" West parallel with and 50.00 feet West of the East line of the southeast quarter of Section 18 a distance of 28.00 feet to the POINT OF BEGINNING;

thence North 89°59'12" West parallel with and 28.00 feet North of said South line of the southeast quarter of section 18 a distance of 401.62 feet to the southwest corner of the La Magna property, described in Instrument Number 97-0713022, records of said County;

thence North 56°00'00" East along the westerly line of said La Magna property 53.83 feet;

thence departing said westerly line South 89°59'12" East parallel with and 58.00 feet North of the South line of the southeast quarter of Section 18 a distance of 336.78 feet;

thence North 45°00'48" East 28.28 feet;

thence South 0°02'23" East 50.00 feet to the POINT OF BEGINNING.

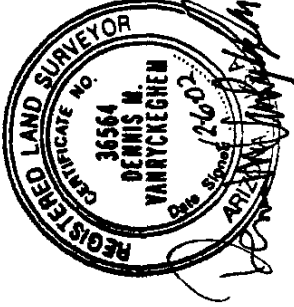
Containing 11593 square feet or 0.2661 acres, more or less.



PART OF THE SE 1/4 OF SEC.18, T.3N.,R.5E.,
G.&S.R.B.&M., MARICOPA COUNTY, ARIZONA

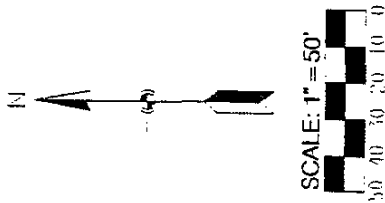
LA MAGNA PROPERTY
APN 217-24-023R
INSTRUMENT 97-0713022

WESTERLY LINE
LA MAGNA PROPERTY



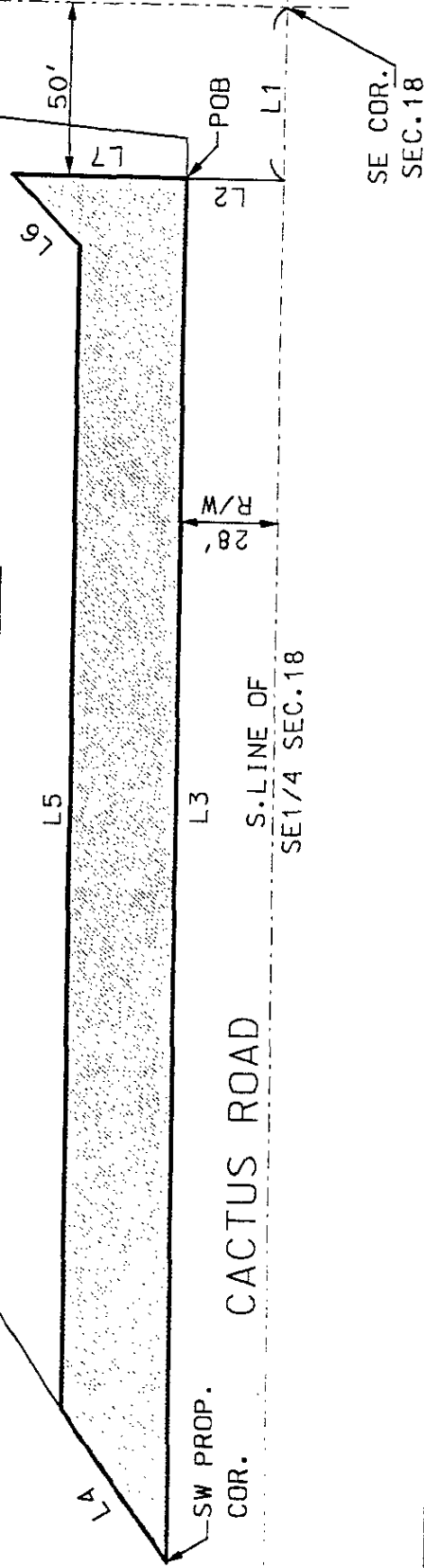
LINE TABLE

L1	N89°59'12"W	50.00'
L2	N00°02'23"W	28.00'
L3	N89°59'12"W	401.62'
L4	N56°00'00"E	53.83'
L5	S89°59'12"E	337.21'
L6	N45°00'48"E	28.28'
L7	S00°02'23"E	50.00'



EASTERLY LINE
LA MAGNA PROP.

E. LINE OF
96TH ST
SE 1/4 SEC. 18



PROJECT NAME LANDSCAPE, PUBLIC UTILITY, SLOPE
AND TRAIL EASEMENT
CACTUS ROAD WEST OF 96TH STREET

CITY OF SCOTTSDALE
INSPECTION SERVICES DIVISION
LAND SURVEY GROUP

PROJECT # 07053

LA MAGNA 217-23-024R

SURVEYED BY: D.V.

DRAWN BY: D.V.

DATE 12/06/02

SHEET 2 OF 2

LEGAL DESCRIPTION

LANDSCAPE, PUBLIC UTILITY, SLOPE AND PATH EASEMENT

96TH STREET NORTH OF CACTUS ROAD

That portion of the South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18, Township 3 North, Range 5 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the southeast corner of said Section 18;

thence North 0°02'23" West 330.16 feet along the East line of the southeast quarter of said Section 18 to the northeast corner of the South half of the South half of the East half of the southeast quarter of the southeast quarter of said Section 18;

thence North 89°59' 12" West along the North line of the said South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18 a distance of 45.00 feet to the POINT OF BEGINNING;

thence departing said North line South 0°02'23" East parallel with and 45.00 feet West of said East line of the southeast quarter of Section 18 a distance of 302.16 feet to a point that lies 28.00 feet North of the South line of said southeast quarter of Section 18;

thence North 89°59' 11" West parallel with and 28.00 feet north of said South line a distance of 5.00 feet;

thence North 0°02'23" West parallel with and 50.00 feet west of said East line of the southeast quarter of section 18 a distance of 302.16 feet to the North line of said South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18;

thence South 89°59' 12" East along said North property line 5.00 feet to the POINT OF BEGINNING.

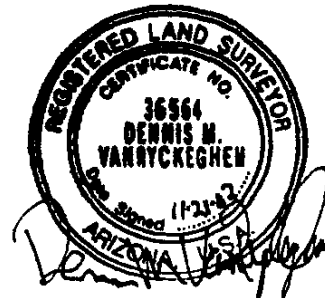
Containing 1510 square feet or 0.0347 acres, more or less.



PART OF THE SE 1/4 OF SEC.18, T.3N.,R.5E.,
G.&S.R.B.&M., MARICOPA COUNTY, ARIZONA

NE COR. OF S1/2 OF
S1/2 OF E1/4 OF SE1/4
OF SE1/4 OF SEC.18

N.LINE OF S1/2 OF
S1/2 OF E1/4 OF SE1/4
OF SE1/4 OF SEC.18



96TH STREET

E.LINE SE1/4
SEC.18

EASTERLY LINE
LA MAGNA PROP.

LA MAGNA PROPERTY
INSTRUMENT 97-0713022
APN 217-24-023R

LINE TABLE

L1	N89°59'12"W	45.00'
L2	S00°02'23"E	302.16'
L3	N89°59'12"W	5.00'
L4	N00°02'23'W	302.16'
L5	S89°59'12"E	5.00'

N 0°02'23" W 330.16'

45'

45'
R/W

N

SCALE: 1" = 50'
50 40 30 20 10 0

CACTUS ROAD

28'
R/W

S.LINE SE1/4
SECT.18

SE COR.
SEC.18

LANDSCAPE, PUBLIC UTILITY,
SLOPE AND PATH EASEMENT
96TH STREET NORTH OF CACTUS ROAD

CITY OF SCOTTSDALE
INSPECTION SERVICES DEPARTMENT
LAND SURVEY GROUP

APN 217-23-024R

SURVEYED BY D.V.

DRAWN BY D.V.

DATE 11/21/02

SHEET 2 OF 2

LEGAL DESCRIPTION
DRAINAGE EASEMENT
CACTUS ROAD WEST OF 96TH STREET

A portion of the South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18, Township 3 North, Range 5 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona;

COMMENCING at the southeast corner of said Section 18;

thence North 89°59'12" West along the South line of the southeast quarter of said Section 18 a distance of 451.62 feet;

thence departing said South line North 0°0'48" East 28.00 feet to the southwest corner of the La Magna property, described in Instrument Number 97-0713022, records of said County;

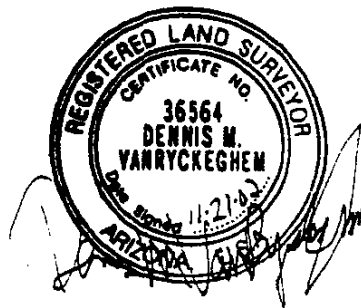
thence North 56°00'00" East 44.64 feet along the westerly line of said La Magna Property to the POINT OF BEGINNING;

thence continuing along said westerly line North 56°00'00" East 58.63 feet;

thence departing said westerly line South 0°00'48" West 32.80 feet;

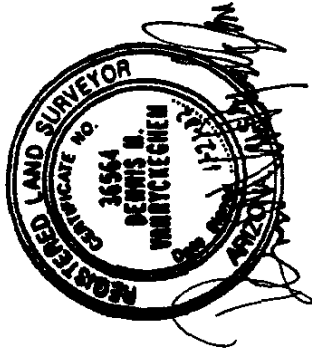
thence North 89°59'12" West 48.60 feet to the POINT OF BEGINNING.

Containing 797 square feet or 0.0183 acres, more or less.



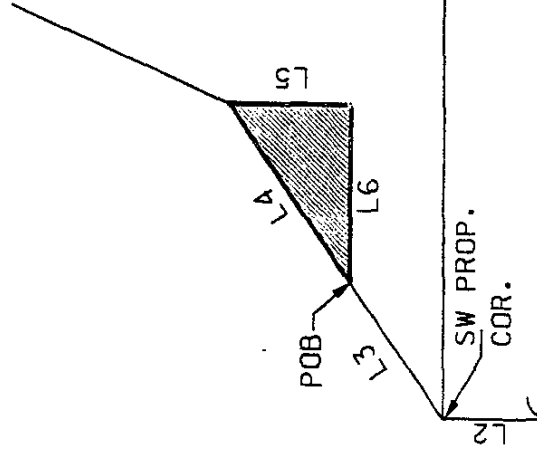
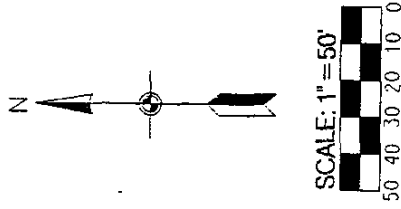
PART OF THE SE 1/4 OF SEC.18, T.3N., R.5E.,
G.&S.R.B.&M., MARICOPA COUNTY, ARIZONA

LA MAGNA PROPERTY
APN 217-24-023R
INSTRUMENT 97-0713022



LINE TABLE

L1	N89°59'12"W	451.62'
L2	N00°00'48"E	28.00'
L3	N56°00'00"E	44.64'
L4	N56°00'00"E	58.63'
L5	S00°00'48"W	32.80'
L6	N89°59'12"W	48.60'



PROJECT NAME DRAINAGE EASEMENT
CACTUS ROAD WEST OF 96TH STREET

CITY OF SCOTTSDALE
INSPECTION SERVICES DIVISION
LAND SURVEY GROUP

PROJECT # 02053

LA MAGNA 217-23-024R

SURVEYED BY: D.V.

DRAWN BY: D.V.

DATE 11/21/02

SHEET 2 OF 2

LEGAL DESCRIPTION

SIGHT TRIANGLE EASEMENT

CACTUS ROAD WEST OF 96TH STREET

A portion of the South half of the South half of the East half of the southeast quarter of the southeast quarter of Section 18, Township 3 North, Range 5 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona;

COMMENCING at the southeast corner of said Section 18;

thence North 89°59'12" West along the South line of the southeast quarter of said Section 18, a distance of 50.00 feet;

thence departing said South line North 0°02'23" parallel with and 50.00 feet West of the East line of said southeast quarter of Section 18 a distance of 53.00 feet to the POINT OF BEGINNING;

thence North 89°59'12" West 25.00 feet;

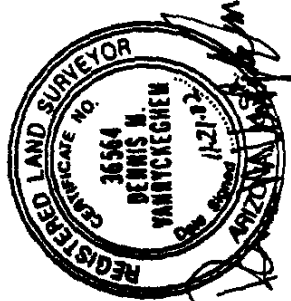
thence North 45°00'42" East 35.31 feet;

thence South 0°02'23" East parallel with and 50.00 feet west of said East line of the southeast quarter of Section 18 a distance of 25.00 feet to the POINT OF BEGINNING;

Containing 312 square feet or 0.0072 acres, more or less.



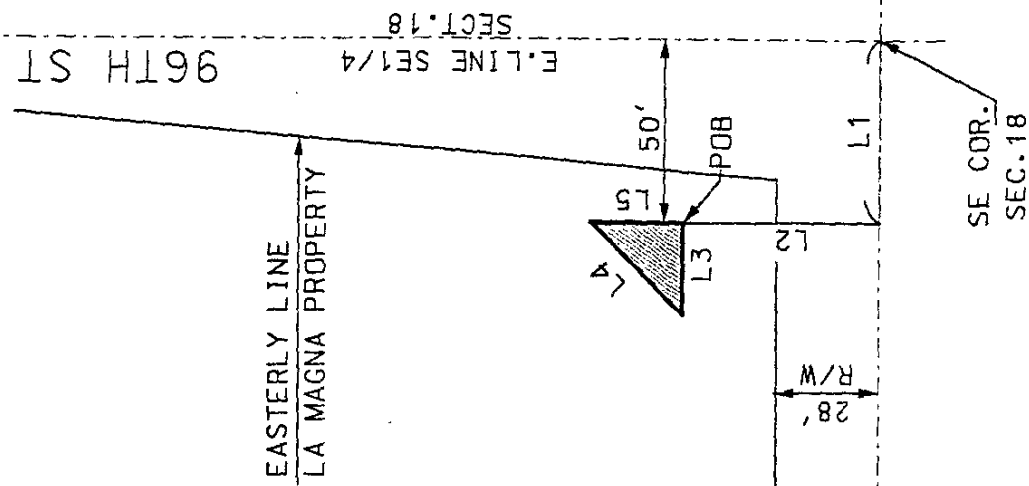
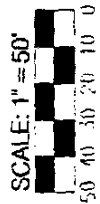
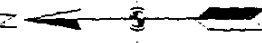
PART OF THE SE 1/4 OF SEC.18, T.3N.,R.5E.,
G.&S.R.B.&M., MARICOPA COUNTY, ARIZONA



LA MAGNA PROPERTY
APN 217-24-023R
INSTRUMENT 97-0713022

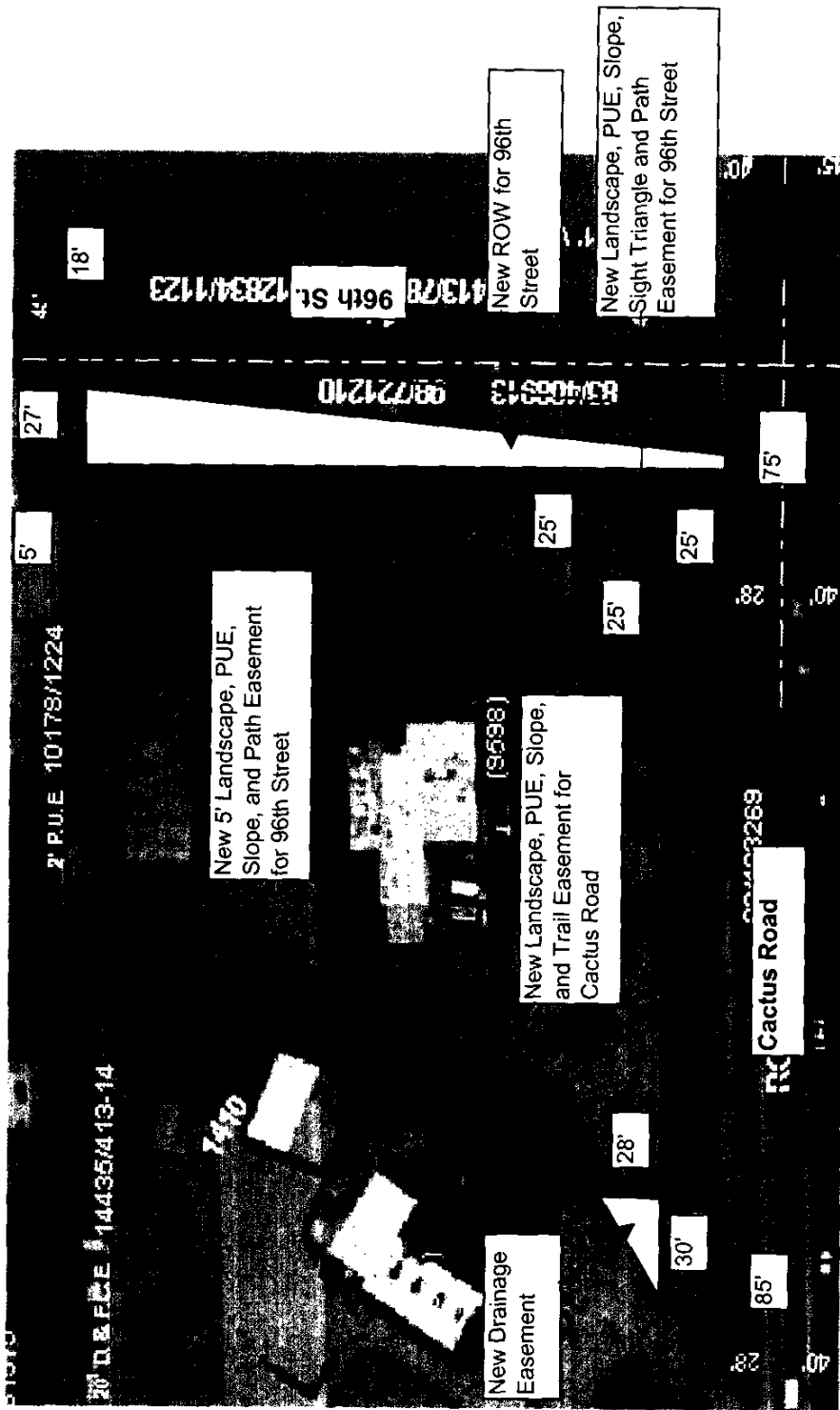
LINE TABLE

L1	N89°59'12"W	50.00'
L2	N00°02'23"E	53.00'
L3	N89°59'12"W	25.00'
L4	N45°00'42"E	35.31'
L5	S00°02'23"E	25.00'



CACTUS ROAD
S. LINE SE1/4
SECT.18

PROJECT NAME SIGHT TRIANGLE EASEMENT CACTUS ROAD WEST OF 96TH STREET		CITY OF SCOTTSDALE INSPECTION SERVICES DIVISION LAND SURVEY GROUP	
PROJECT # 02053	LA MAGNA 217-23-024R	SURVEYED BY: D.V.	DRAWN BY: D.V. DATE 11/21/02
		SHEET 2 OF 2	



La Magna 217-23-024R



Capital Project Management

7447 E Indian School Rd., Suite 205
Scottsdale, AZ 85251

PHONE 480-312-7250
FAX 480-312-7971
WEB www.ci.scottsdale.az.us/capitalprojects

March 25, 2003

CERTIFIED MAIL

Allan and Julie Ann La Magna
P.O. Box 47
Pine, Arizona 85544-0047

RE: Project: 410-S9903; 96th Street Improvements
Parcel No.: 217-24-023R (9598 E. Cactus Rd./ NWC of Cactus Rd. & 96th St.)

Dear Mr. And Mrs. La Magna:

As you are aware, the City of Scottsdale is planning roadway and multi-use path improvements for 96th Street from Shea Boulevard to Thunderbird Road. The goal of the project is to improve traffic flow, provide added safety for both pedestrians and vehicles, reduce delay times at intersections, and improve non-motorized circulations.

In order to facilitate this project, it will be necessary for us to acquire roadway right-of-way and various easement interests as noted below and per the attached exhibits.

On February 18, 2003, Scottsdale's City Council adopted Resolution No. 6253, authorizing the acquisition of the necessary rights-of-way. Consequently, the City hired Dennis Lopez, an independent fee appraiser of Dennis L. Lopez & Associates, to appraise the right-of-way and easement rights. Jan Sell of Sell & Associates, reviewed Mr. Lopez's appraisal along with City staff, and all concur that Mr. Lopez has reached an accurate and well supported conclusion of value.

Based on the aforementioned appraisal, the City of Scottsdale offers the amount of \$117,611 for the purchase of the roadway right-of-way and easement rights from you. This offer is contingent upon the City Council formally authorizing the purchase agreement. As a matter of policy, the City of Scottsdale will pay all title and escrow fees associated with the transaction.

It is anticipated this project will begin on or about December, 2003 and be completed approximately six months thereafter.

Mr. & Mrs. La Magna
Page Two
March 25, 2003

A breakdown and explanation of this purchase offer is as follows:

Partial Acquisition of Fee Simple Estate

- Roadway Right-of-Way: 0.1388 acre x \$260,000/acre = \$36,088
- Landscape, Public Utility, Slope & Path Easement: 0.0347 ac. x \$260k/ac. = 9,022
- Drainage Easement: 0.0183 ac. x \$260,000/ac. = \$4,758 x .50 = 2,379
- Sight Triangle Easement: 0.0072 acre x \$260k/ac. = \$1,872 x .50 = 936
- Landscape, Public Utility, Slope & Trail Easement:
0.2661 ac. x \$260k/ac. = \$69,186 x 1.00 = 69,186

Total Fair Market Value: = \$117,611

If the above terms and transactions are acceptable to you, please sign, or have your appropriate representative sign below, thereby noting your acceptance. Upon receipt of your acceptance, we will present a recommendation to the City Council to authorize the purchase agreement at our May, 2003 City Council Meeting.

Again, please note, any offers would be contingent upon City Council's formal approval. You may contact me at (480) 312-7847, if you have any questions regarding this acquisition, or contact Marek Urbanek, the project manager, at (480) 312-2563 with questions about the construction activities. Thank you.

Sincerely,



Rhonda Thomas
Right of Way Agent

Approval of Offer:


Allan A. La Magna

14-1-03
Date

Attachments


Julie Ann La Magna

14-1-03
Date

cc: Ron King

RESOLUTION NO. 6253

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ACQUISITION OF REAL PROPERTY INTERESTS IN CERTAIN REAL PROPERTIES ALONG 96TH STREET FROM SHEA BOULEVARD TO THUNDERBIRD ROAD NECESSARY FOR THE CONSTRUCTION OF IMPROVEMENTS TO 96TH STREET BETWEEN SHEA BOULEVARD AND THUNDERBIRD ROAD.

BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

SECTION 1. That it is deemed necessary and essential as a matter of public welfare that fee title and other property interests be acquired in the real property described in Exhibit "A" attached hereto, (hereinafter the "Real Property") for the construction of public street improvements along 96th Street between Shea Boulevard and Thunderbird Road.

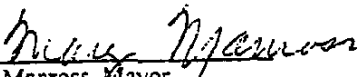
SECTION 2. That the City Manager or designee is hereby directed and authorized to acquire fee title to each parcel, or such lesser interests as the City Manager or designee may find appropriate, and to determine, through the use of an independent appraisal and review appraisal, the fair market value of the interests acquired and to negotiate acquisition prices with the property owners, subject to ratification and approval by this Council.

SECTION 3. Notwithstanding Section 2 above, the City Manager or designee is authorized and directed to finalize the purchase of the necessary interests in any portion of the Real Property for which the price is less than \$5,000 and is no more than the appraised value.

SECTION 4. That the duly authorized disbursing agents of the City of Scottsdale are hereby authorized and directed to pay all sums that may be necessary to establish the fair market value and negotiate a purchase price for the above-described property including, but not limited to, title reports, appraisal and review appraisal services, escrow fees, title insurance, and closing costs.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 18th day of February 2003.

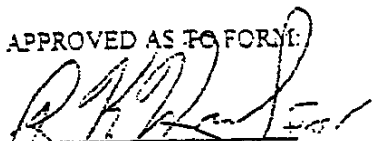
CITY OF SCOTTSDALE,
An Arizona municipal corporation


Mary Manross, Mayor

ATTEST:


Sonia Robertson, City Clerk

APPROVED AS TO FORM:


David A. Pennartz, City Attorney

CITY COUNCIL REPORT



MEETING DATE: 04/14/2003

ITEM No.

19

GOAL: Neighborhoods

SUBJECT

Public Hearing on Scottsdale's Community Development Block Grant Fiscal Year 2003-2004 Annual Action Plan

REQUEST

1. Solicit public testimony regarding the Fiscal Year 2003-2004 Annual Action Plan for the use of Community Development Block Grant (CDBG) funds in the amount of \$1,400,000; and the HOME Investment Partnerships Program (HOME) funds in the amount of \$423,892; and
2. Adopt Resolution No. 6274 which:
 - Approves and authorizes the submittal of Scottsdale's Annual Action Plan, and the execution of a contract with the U.S. Department of Housing and Urban Development (HUD) for CDBG funding;
 - Approves the recommendations of the Human Services Commission for the allocation of Fiscal Year 2003-2004 CDBG and HOME funds, Scottsdale Cares projects in the amount of \$190,000, and Human Services General Fund projects in the amount of \$180,000 for public services and \$100,000 for affordable housing;
 - Authorizes and awards contracts to agencies to be funded with Fiscal Year 2003-2004 CDBG and HOME funds, subject to final negotiation of scopes of work and the execution of the HUD contract;
 - Authorizes and awards contracts to agencies funded through Scottsdale Cares and General Funds; and
 - Approves reprogramming of remaining resources under prior years funding.

Related Policies, References: City Council adopted Resolution No. 5501 on March 20, 2000 which authorized and adopted the City of Scottsdale's Consolidated Plan for general use of CDBG funding and HOME funds for Fiscal Years 2000/2004.

Action Taken _____

BACKGROUND

Each year CDBG funds are awarded on a noncompetitive basis to communities with populations greater than 50,000. The amount of funding allocated is based on overcrowded housing, population and poverty levels; or age of housing, population growth lag and poverty. The primary categories of eligible expenditures are public services (limited to a maximum of 15% of the allocation), housing rehabilitation, public facilities, and economic development. The expenditures must be consistent with the City's Consolidated Plan. Funds may be sub granted to individuals, non-profit and for-profit organizations, as well as other units of government. A minimum of 70% of the funds must benefit low and moderate-income households.

HOME Funds are a federal housing assistance block grant and are available to the City of Scottsdale as a result of participation in the Maricopa Consortium. Through creative housing partnerships, Scottsdale's HOME program supports a wide range of high quality, safe, and affordable housing. The intent of the HOME program is to provide decent affordable housing to lower-income households; expand the capacity of non-profit housing providers; strengthen the ability of state and local governments to provide housing; and leverage private sector participation. The HOME Program requires agencies provide a match in an amount equal to no less than 25 percent of the total HOME funds awarded. To be considered eligible as match, a contribution must be made from nonfederal sources and must be a permanent contribution to a HOME activity or to HOME match-eligible housing. Typical uses of HOME funds include both single-family and multi-family housing acquisition, rehabilitation, new construction, and tenant-based rental assistance.

The Scottsdale Cares program was created by the City of Scottsdale in 1995 to allow utility bill customers an opportunity to add a voluntary contribution of \$1 per month to their bills to support a variety of human service programs. The Scottsdale Cares program funds activities that promote positive development of youth, adults, and seniors; strengthen the capability of families and the self-sufficiency of adults; and assist Scottsdale citizens of all ages to address crisis needs.

The City of Scottsdale also funds non-profit agencies to conduct human services and housing programs in Scottsdale. The city budgets for these services in the General Fund and awards funding on an annual basis. General Funds are available in the following categories: Counseling, Domestic Violence Shelter Services, Legal Services, Regional Homeless Shelter Services, Senior Services, and Affordable Housing.

Funds to be awarded to non-profit agencies in this council action are leveraged with other resources the agencies have to provide housing and social services to Scottsdale citizens. For Fiscal Year 2001-2002, over \$1,560,000 in other funds available to non-profit agencies were used in conjunction with the \$1,390,000 in CDBG and HOME funds that were awarded to non-profit agencies to provide services in the community.

ANALYSIS & ASSESSMENT

Recent staff action. Staff is currently in the process of implementing the CDBG Fiscal Year 2002-2003 Annual Action Plan approved by Council on April 16, 2002.

Significant issues to be addressed. The City of Scottsdale has participated in and administered the CDBG program over the past twenty-eight years. Participation in the twenty-ninth year program demonstrates the city's commitment to the welfare of Scottsdale citizens and to meeting the national objectives of HUD which are: benefiting low and moderate income persons, addressing slums or blight, and meeting a particularly urgent community need.

Community involvement. The HUD Consolidated Plan regulations require that, prior to the start of our fiscal year in July, the City of Scottsdale submit to HUD an Annual Action Plan on the proposed use of all allocated funds for the CDBG program. This submission will secure our allocation of \$1,400,000. The Annual Action Plan is developed in compliance with specific HUD guidelines for solicitation of public comments and must be consistent with the city's adopted Consolidated Plan. Tonight's public hearing is designed to solicit any additional input regarding the use of CDBG and HOME funding resources, and to assign a use for all available funding.

This council action will allocate funding from four sources to a variety of human services and housing projects in response to the recommendations of the Human Services Commission, which hosted two public meetings to hear public services funding proposals from agencies and ask questions about the services to be provided. The Housing Board hosted a public meeting to hear housing services funding proposals.

HOME funds are available to Scottsdale as a result of participation in the Maricopa County Consortium. Other members in the Consortium include Maricopa County, Chandler, Gilbert, Glendale, Mesa, Peoria, and Tempe. HOME funds are also a federal block grant. The City of Scottsdale has participated in and administered the HOME program over the past eleven years. HOME supports a wide range of activities that increase the supply of affordable housing for low-income people, and housing activities through creative housing partnerships among other cities, counties, states, and non-profit organizations. Typical uses include acquisition, rehabilitation, new construction, tenant-based rental assistance, and other related activities. Scottsdale's net HOME allocation from the Maricopa County Consortium this fiscal year is \$423,892. All HOME and CDBG funds must be used to benefit persons whose incomes fall below 80% of the area median income level.

The Human Services Commission and the Housing Board heard over fifty presentations from non-profit agencies and evaluated their written proposals that resulted in the funding recommendations for Council's consideration. The Human Services Commission's final recommendation results in thirty-three agencies providing 44 different activities to an estimated 15,000+ individuals plus 237 households to be funded utilizing these four funding sources.

RESOURCE IMPACTS

Available funding. HUD, Scottsdale Cares, and the City's General Funds provide funding for recommended projects. The funding recommendations for the CDBG program will use the entire allocation of \$1,400,000, plus reprogrammed funds not utilized from prior years grants in the amount of \$69,000. The funding recommendations for the HOME program will use the entire allocation of \$423,892. Match funds (25%) are required from the non-profit agency before the expenditure of HOME funds. This action will also allocate \$190,000 from Scottsdale Cares; \$180,000 in General Funds for public services, and \$100,000 for affordable housing. The proposed funding recommendations have been included in the proposed Fiscal Year 2003-2004 Grants Budget for CDBG and HOME funds. Scottsdale Cares and General Funds for public services and affordable housing activities have been included in the proposed Fiscal Year 2003-2004 General Operating Budget for Council's consideration.

Staffing, workload impact. No additional staff is requested in this action.

Maintenance requirements. Additional support costs related to the CDBG and HOME programs will be absorbed with federal grant funds.

Future budget implications. Future acceptance of additional CDBG and HOME funds may require additional staff to support added programs and service levels. Additional costs related to increased staff support will be incurred by federal funds. Future funding recommendations will be included in the city's Grants and General Operating Budgets in future years.

Cost recovery options. Not applicable.

OPTIONS & STAFF RECOMMENDATION

City Council may consider the following options:

Description of Option A: Approve the proposed CDBG Annual Action Plan with funding recommendations from the Human Services Commission and Housing Board – HUD requires approval of the Annual Action Plan for the City to administer the CDBG Program. Continue to have agencies present their proposals to the Human Services Commission and the Housing Board. The Human Services Commission and Housing Board deliberate funding allocations based on the 50+ agency presentations they hear to develop their recommendations.

Description of Option B: Do not approve the proposed CDBG Annual Action Plan with funding recommendations from the Human Services Commission and Housing Board – Not approving the CDBG Annual Action Plan will result in the city losing over \$ 1,800,000 in federal funding that would be used to provide support for human service and housing programs to low-income individuals and families living in Scottsdale.

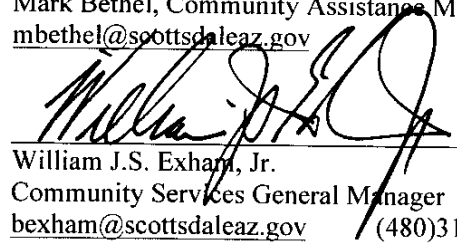
Recommended Approach: Staff recommends Council's approval of the CDBG Annual Action Plan and move forward with the Human Services Commission and Housing Board funding recommendations.

Proposed Next Steps: If this resolution is approved, staff will continue to operate the CDBG and HOME programs in compliance with federal regulations and will negotiate contracts with agencies that have been awarded funds to begin July 1, 2003.

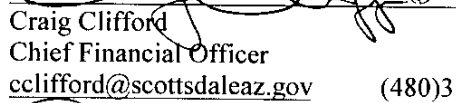
RESPONSIBLE DEPT(S) Community Services/Human Services/Community Assistance Office

STAFF CONTACT Mark Bethel, Community Assistance Manager (480)312-2309
mbethel@scottsdaleaz.gov

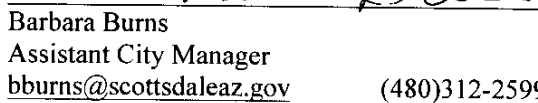
APPROVED BY


William J.S. Exham, Jr.
Community Services General Manager
bexham@scottsdaleaz.gov (480)312-2377

3/26/03
DATE


Craig Clifford
Chief Financial Officer
cclifford@scottsdaleaz.gov (480)312-2364

3/26/03
DATE


Barbara Burns
Assistant City Manager
bburns@scottsdaleaz.gov (480)312-2599

3/27/03
DATE

ATTACHMENTS

- I. Resolution No. 6274
- II. Recommendations for Funding
- III. Details on Projects

RESOLUTION NO. 6274

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE SUBMITTAL OF FISCAL YEAR 2003-2004 ANNUAL ACTION PLAN FOR THE CITY OF SCOTTSDALE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; APPROVING THE EXECUTION OF A CONTRACT WITH THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE PURPOSES FOR WHICH THE FISCAL YEAR 2003-2004 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING MAY BE EXPENDED; APPROVING ALLOCATIONS FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS, HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS, SCOTTSDALE CARES FUNDS, AND GENERAL FUNDS FOR PUBLIC SERVICES AND AFFORDABLE HOUSING; AUTHORIZING EXECUTION OF CONTRACTS TO BE FUNDED FROM THESE FOUR PROGRAMS FOR THE 2003-2004 FISCAL YEAR; AND APPROVING THE REPROGRAMMING OF REMAINING RESOURCES UNDER PRIOR YEARS FUNDING.

WHEREAS, the City of Scottsdale is to receive approval for funding from the U.S. Department of Housing and Urban Development (HUD) for Fiscal Year 2003-2004 in the amount of \$1,400,000 in Community Development Block Grant (CDBG) funds, and \$423,892 in HOME Investment Partnerships Program (HOME) allocations; and

WHEREAS, the City of Scottsdale has CDBG funds from prior years grants in the amount of \$69,000 available for reprogramming, which brings the total CDBG funding to \$1,469,000; and

WHEREAS, Scottsdale citizens contributed \$190,000 through the Scottsdale Cares utility bill donation program; and

WHEREAS, the City has budgeted \$180,000 from General Funds for public services, and \$100,000 for affordable housing.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Arizona, as follows:

Section 1. The CDBG Annual Action Plan for Fiscal Year 2003-2004 shall be submitted to HUD to reflect the following usage of funding, and the mayor is hereby authorized, on behalf of the City, to execute a contract with HUD for Fiscal Year 2003-2004 CDBG funding which includes \$69,000 from prior years grants available for reprogramming:

Public Service Activities	\$ 210,000
Public Facilities	75,000
Housing Rehabilitation Activities	637,760
Housing Services	266,240
Program Administration Costs	<u>280,000</u>
TOTAL CDBG ACTIVITIES	\$1,469,000

Resolution No. 6274
April 14, 2003

Section 2. The Fiscal Year 2003-2004 HOME funds shall be allocated in the following manner, contingent upon securing the necessary 25% cash match from non-federal sources:

Housing Project	\$ 300,000
Program Admin. Costs	26,493
Not Allocated	<u>97,399</u>
TOTAL HOME ACTIVITIES	\$ 423,892

Section 3. The agencies, projects, and amounts listed in RECOMMENDATIONS FOR FUNDING FOR FY 2003-04 CDBG and HOME FUNDING-SCOTTSDALE CARES and GENERAL FUNDS, attached (Attachment II to the City Council Report) are hereby authorized; and contracts with the identified non-profit subrecipients are awarded, subject to final negotiation of scopes of work and prior execution of a grant contract with HUD. The mayor is hereby authorized, on behalf of the City, to execute contracts with subrecipients when the scopes of work are finalized and the grant contract with HUD has been executed.

Section 4. The mayor is hereby authorized, on behalf of the City, to execute the contract with the subrecipient Foundation for Senior Living for its Emergency Repair Program, allocating reprogrammed funds from prior years grants, in the amount of \$69,000 to enable that agency to undertake emergency repairs prior to the start of the July 1 program year.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona, this ~~14th~~ day of April, 2003.

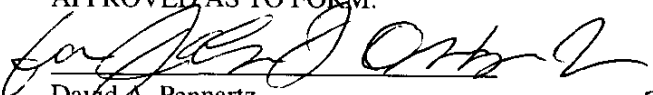
CITY OF SCOTTSDALE, an Arizona
municipal corporation

Mary Manross
Mayor

ATTEST:

Sonia Robertson
City Clerk

APPROVED AS TO FORM:



David A. Pennartz
City Attorney

RECOMMENDATIONS FOR FUNDING FOR FY 2003-04
CDBG and HOME FUNDING
SCOTTSDALE CARES AND GENERAL FUNDS

CDBG Funds

Total Allocation	\$ 1,400,000
Less Public Service Allocation (15% of Total Allocation)	(210,000)
Less Administrative Allocation (20% of Total Allocation)	(280,000)
Add Reprogrammed Funds	<u>69,000</u>
CDBG Funds for Public Facilities and Housing Projects	\$ 979,000

HOME Funds

Net HOME Allocation	\$ 423,892
Less Administrative Allocation (6% of Program Total)	(26,493)
Less Funds Not Allocated	<u>(97,399)</u>
HOME Funds for Housing Related Project	\$ 300,000
General Funds Affordable Housing Fund	<u>100,000</u>
Total Funds for Housing Related Project	\$ 400,000

CDBG Funds - Public Service Allocation: \$210,000

Advocates for the Disabled, Disability Claim Service	\$ 10,000
Big Brothers Big Sisters of Central Arizona, Scottsdale Mentoring	10,000
Boys & Girls Clubs of Scottsdale, Operation Outreach	19,500
Central Arizona Shelter Services, Men's Shelter Beds	11,100
Chrysalis Shelter for Victims of Domestic Violence, Scottsdale Shelter	27,000
Community Information & Referral, CONTACS Hotline	10,000
Homeward Bound, Transitional Housing Services Case Management	23,000
Save the Family, Transitional Housing Services Case Management	22,000
Scottsdale Foundation for the Handicapped, Employment Program	26,000
Tempe Community Action Agency, Senior Nutrition Program	39,000
Tempe Community Action Agency, Senior Peer Counseling Program	<u>12,400</u>
	\$ 210,000

CDBG Funds - Public Facilities, Housing Rehabilitation, and Housing Services: \$979,000**Public Facilities**

Community Bridges	
Transitional Redevelopment Center for Women and Children at Risk	\$ 75,000

Housing Rehabilitation

City of Scottsdale, Housing Rehabilitation Program	321,760
Foundation for Senior Living, Emergency Repair Program	175,000
Foundation for Senior Living, Housing Rehabilitation Program	141,000

Housing Services

Community Services of Arizona, First-Time Homebuyer Program	<u>266,240</u>
	\$ 979,000

PROJECTS NOT RECOMMENDED FOR CDBG FUNDING: None**HOME Funds - Housing Related Project: \$300,000**

Community Services of Arizona, Scottsdale Rental Housing Project	\$ 300,000
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PROJECTS NOT RECOMMENDED FOR HOME FUNDING: None

SCOTTSDALE CARES FUNDS: \$190,000

Aid to Adoption of Special Kids, Family Support Services	\$ 5,000
AIDS Project Arizona, Family Care Services	5,000
Area Agency on Aging, Benefits Assistance Program	10,000
Assistance for Independent Living, In Home Services for Frail Elderly	5,000
Body Positive, Client Support Program	5,000
Camp Fire, Youth Outreach Programs	7,200
Child Crisis Center - East Valley, Emergency Shelter Program	5,000
Community Bridges, Crisis Services/Medical Detoxification	15,800
Community Information and Referral, 24-hour Helpline	5,000
Concerned Citizens for Community Health, Emergency Services	36,000
Free Arts of Arizona, General Operating Support	5,000
Mental Health Association, Information & Referral/Peer Support	7,000
PREHAB of Arizona, La Mesita Child/Youth Development Programs	5,000
Scottsdale Found. for Handicapped, Facility Based Trng./Employment	10,000
Teen Lifeline, Gen. Support-Life Skills Dvlpmnt./Hotline/Comm.Educ.	9,000
Tempe Community Action Agency, Home Delivered Meals	20,000
Valley Center of the Deaf, Counseling/Outreach for Hearing Loss	13,000
Valley of the Sun YMCA, Scottsdale South Paiute Teen Center	22,000
	\$ 190,000

PROJECTS NOT RECOMMENDED FOR SCOTTSDALE CARES FUNDING:

All Star Kids Tutoring
Boys & Girls Clubs of Scottsdale, Cultural Connection
Catholic Social Service, Community Service
Girls Ranch Inc. of Arizona, Family Scholarship
Health World of Scottsdale, Health World Outreach Programs
Junior Achievement of Arizona, Exchange City
Planned Parenthood, Community Educational Outreach Programs
Recording for the Blind & Dyslexic, Educational Outreach
Save the Family Foundation of Arizona, Homeless Children's Intervention
Southwest Behavioral Health Services, Strengths and Solutions Programs
Volunteer Center of Maricopa County, Increasing Volunteerism in Scottsdale

GENERAL FUNDS: \$180,000

Beatitudes Center D.O.A.R., Volunteer Interfaith Caregivers Program	\$ 18,000
Central AZ Shelter Services, Emergency Shelter & Supportive Services	47,000
Chrysalis Shelter, Domestic Violence Advocate	14,000
Community Legal Services, Community Outreach and Education	5,000
Experience Plus, Employment Referral Service	6,000
Jewish Family & Children's Service, Bilingual Masters Level Therapist	20,000
Jewish Family & Children's Service, Home Based Geriatric Program	20,000
Mesa Community Action Network, East Valley Men's Center	34,000
PREHAB of Arizona, La Mesita-A Family Shelter	16,000
	\$ 180,000

PROJECTS NOT RECOMMENDED FOR GENERAL FUNDS:

Volunteer Center of Maricopa County

**DETAILS ON PROJECTS RECOMMENDED FOR FY 2003-04 FUNDING
CDBG AND HOME FUNDING
SCOTTSDALE CARES AND GENERAL FUNDS**

CDBG FUNDING - \$1,469,000

PUBLIC SERVICES - \$210,000

Advocates for the Disabled - \$10,000

Through the Disability Claim Service program, specialized intensive case-management will be provided to 12 disabled, low-income persons who are in the process of trying to obtain Social Security disability benefits and/or Supplemental Security Income benefits.

Big Brothers Big Sisters of Central Arizona - \$10,000

Through the Scottsdale Mentoring program, science based prevention services through adult/child mentoring will be provided to 20 youth aged 6-15 citywide.

Boys and Girls Clubs of Scottsdale - \$19,500

Through Operation Outreach, 683 youth, aged 6-18, of low and moderate-income families living in the Minnezona, Paiute, Belleview, and Vista del Camino neighborhoods in Scottsdale are provided safe, high quality, value based educational, cultural, social and recreational programs; including the Paiute Neighborhood Drop-In program, and the Summer and Afterschool English Language Studies programs.

Central Arizona Shelter Services, Inc. - \$11,100

Through the Main Shelter Equipment Project (Men's Shelter Beds), new beds will be purchased; and lodging will be provided to 334 homeless men.

Chrysalis Shelter for Victims of Domestic Violence, Inc. - \$27,000

Through the Scottsdale Crisis Shelter, 231 single women and women with children, who are victims of domestic violence, will be provided shelter, related supportive counseling, and case management services.

Community Information and Referral, Inc. - \$10,000

Provides a Community Network for Accessing Shelter (CONTACS) Hotline 24-hour, 7 days a week, for 1500 individuals and families, who may be homeless or victims of domestic violence, to call one central number to determine bed availability at shelters in Maricopa County.

Homeward Bound - \$23,000

Provides case management and employment services to 60 homeless/impending homeless Scottsdale adults and children (18 families), by placing them in their scattered-site transitional housing properties in Scottsdale.

Save the Family Foundation of Arizona - \$22,000

Provides case management and support services to 26 homeless adults and children (8 families) referred from Scottsdale who are accepted into the agency's Transitional Living Program. The transitional housing units are in Scottsdale or other Valley locations.

Scottsdale Foundation for the Handicapped - \$26,000

Through the Community-Based Employment Program, supported employment services, job readiness and training, job development and placement, and coaching services will be provided to 24 adults with severe disabilities.

Tempe Community Action Agency, Inc. - Scottsdale Senior Action Nutrition Program - \$39,000

Provides congregate meals, socialization activities, health programs, and community resources for 300 elderly Scottsdale residents at the Civic Center Senior Center and at Vista del Camino.

Tempe Community Action Agency, Inc. - Senior Peer Counseling - \$12,400

Provides one-on-one counseling and group problem-solving support for 78 elderly and disabled Scottsdale residents.

PUBLIC FACILITIES - \$75,000

Community Bridges - \$75,000

These funds, together with funding from other East Valley cities, will be used to construct a 24 unit Transitional Redevelopment Center for Women & Children at Risk for homeless pregnant/post partum women, along with their children, who have psychological and substance abuse issues, and will receive intervention and support.

HOUSING REHABILITATION - \$637,760

City of Scottsdale - Housing Rehabilitation Program - \$321,760

The City of Scottsdale Citizen and Neighborhood Resources department will administer the Housing Rehab program. This program will provide 10 low and moderate income eligible, owner occupied, single family homeowners with major home repairs and renovations for their homes.

Foundation for Senior Living - Emergency Repair Program - \$175,000

The Foundation for Senior Living, through their FSL Home Improvements, will administer the Emergency Repair program. This program will provide 50 low and moderate income eligible, owner occupied, single family homeowners with emergency type repair services for their homes. Referrals are through the City of Scottsdale Citizen and Neighborhood Resources department.

Foundation for Senior Living - Housing Rehabilitation Program - \$141,000

The Foundation for Senior Living, through their FSL Home Improvements, will administer the Housing Rehab program. This program will provide 6 low and moderate income eligible, owner occupied, single family homeowners with major home repairs and renovations for their homes. Referrals are through the City of Scottsdale Citizen and Neighborhood Resources department.

HOUSING SERVICES - \$266,240

Community Services of Arizona - \$266,240

The First-Time Homebuyer Program will provide 10 first-time low and moderate income Scottsdale homebuyers with education, counseling, down payment, and closing cost assistance.

PROGRAM ADMINISTRATION COSTS - \$280,000

City of Scottsdale - Administration and Planning - \$280,000

Funds budgeted in this category will cover expenditures relating to planning, preparing Annual Action Plans, performance and evaluation reports, environmental reviews, labor standards reports, locally compatible grant applications, activities to affirmatively further fair housing, and general administrative staff and equipment costs to operate the CDBG program through the Community Assistance Office.

HOME FUNDING - \$326,493

Community Services of Arizona – Scottsdale Rental Housing Project - \$300,000

This funding, together with \$100,000 from the City of Scottsdale's General Funds, will acquire and rehabilitate at least 8 units of rental housing that will be occupied by tenants earning 60% or less than area median income.

City of Scottsdale - Administration - \$26,493

Funds budgeted in this category will cover expenditures relating to planning, preparing annual reports, project set-ups and completions, as well as administrative staff and equipment costs to operate the HOME program through the City of Scottsdale Community Assistance Office.

SCOTTSDALE CARES - \$190,000

Aid to Adoption of Special Kids - \$5,000

Through the Family Support and Preservation Services program, 8 foster and adoptive families will be provided counseling for the medical, psychological and social needs of each child.

AIDS Project Arizona - \$5,000

Through the Family Care Services program, 399 HIV/AIDS infected and affected children and families will be provided various services to address their special needs.

Area Agency on Aging - \$10,000

Through the Benefits Assistance Program, one-on-one counseling on Medicare issues will be provided to 440 beneficiaries and caregivers.

Assistance for Independent Living - \$5,000

Through the In Home Services for the Frail Elderly, 23 older adults will be provided in-home support services to help with activities of daily living.

Body Positive - \$5,000

Through the Client Support--In-Home Respite Care/Positive Pals programs, trained volunteers will be matched with 26 individuals, infected and affected with HIV/AIDS, to provide support and assistance in managing their disease.

Camp Fire-Greater Arizona - \$7,200

Through the Scottsdale Youth Outreach-Minnezona Neighborhood program, 29 children and youth will be provided services that include group mentoring, leadership development, outdoor activities, and resident camp.

Child Crisis Center – East Valley - \$5,000

Through the Residential Program's Emergency Shelter, emergency shelter and counseling services will be provided to 13 abused and neglected children.

Community Bridges - \$15,800

Through the Crisis Services/Acute Detoxification programs, 255 adult men and women will be provided services in order to save lives and reduce the impact of alcoholism and drug addiction.

Community Information and Referral - \$5,000

Through the 24 Hour Helpline, 3,759 Scottsdale residents will be provided information and referrals to appropriate service providers that can assist with their needs.

Concerned Citizens for Community Health - \$36,000

Through the Emergency Services for Rent/Mortgage, Utilities and Food programs, 45 households will be provided assistance for rent or mortgage; 100 households will be provided utility payments; and 230 low-income elderly and disabled citizens will be provided with weekly food bags.

Free Arts of Arizona - \$5,000

This funding will provide general support for five arts based programs to 333 abused, neglected, and homeless children.

Mental Health Association of Arizona - \$7,000

Provides Information and Referral, Peer Support Groups, and OPTION programs to 887 individuals with mental and behavioral health disorders.

PREHAB of Arizona - \$5,000

Through the La Mesita Child and Youth Development Center, five adults will receive essential services to gain self-sufficiency; and ten homeless children will be provided childcare and youth programs.

Scottsdale Foundation for the Handicapped - \$10,000

Through the Facility Based Training and Employment Program, 10 adults with severe disabilities will be provided the opportunities and resources to develop productive work habits.

Teen Lifeline - \$9,000

Through the Life Skills Development, Community Education, and Peer Counseling Hotline programs, 4,040 teens will be assisted..

Tempe Community Action Agency - \$20,000

Through the South Scottsdale Home Delivered Meals Program, it is proposed that 178 homebound elderly and disabled South Scottsdale residents will be provided home delivered meals.

Valley Center of the Deaf - \$13,000

Through the Counseling for Hearing Loss and Hearing Health program, it is proposed that 36 seniors will be assisted.

Valley of the Sun YMCA/Scottsdale South - \$22,000

Through the Scottsdale South YMCA Paiute Teen Center, 180 youth will be provided services and activities at the center.

GENERAL FUNDS - \$180,000

Beatitudes Center D.O.A.R. - \$18,000

Through the Volunteer Interfaith Caregivers Program, 294 homebound and disabled adults will be provided various services to enable them to remain to live in their own homes.

Central Arizona Shelter Services - \$47,000

Provides emergency shelter and supportive services, including case management and employment services, for 151 homeless adults.

Chrysalis Shelter for Victims of Domestic Violence - \$14,000

Provides for Domestic Violence Advocates who will assist 210 women and children, who are homeless due to domestic violence, at the shelter with intake, assessment, counseling, case management, and referrals.

Community Legal Services - \$5,000

Through the Removing Barriers to Justice and Community Outreach and Education programs, civil legal services will be provided to 95 low-income residents.

Experience Plus – \$6,000

Through the Scottsdale Experience Plus program, 250 older men and women needing employment are provided job referral services.

Jewish Family & Children's Service - \$20,000

Through a Bilingual Masters Level Counselor, 182 residents will be provided counseling services.

Jewish Family & Children's Service - \$20,000

Through the Scottsdale Home Based Geriatric Program, 84 elderly and disabled residents will be provided services to enable them to maintain independence.

Mesa Community Action Network - \$34,000

Through the East Valley Men's Center, 27 homeless men will be provided food and shelter, case management, counseling, work assistance, transportation, tutoring, and socialization skills to enable them to become self-sufficient.

PREHAB of Arizona - \$16,000

Through La Mesita--A Family Shelter, emergency shelter, food, childcare, counseling, case management, and job training are provided to 10 homeless adults and children to help them gain self-sufficiency.

CITY COUNCIL REPORT



MEETING DATE: April 15, 2003

ITEM NO. 20 GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT

Pueblo Poquito Abandonment

REQUEST

Request to consider the following:

1. Abandon 10 feet of Mountain View Road right-of-way, 20 feet of 123rd Street right-of-way (including a 46-foot radius cul-de-sac), and a 33 feet General Land Office patent roadway easement along 123rd Street.
2. Adopt Resolution Number 6268 abandoning the aforementioned right-of-ways and roadway easement.

11-AB-2002

Related Policies, References: (10-PP-98, 20-AB-99)

OWNER

Saddle Rock Ranch L L C
480-860-6463
James and Cynthia Jaskie
12256 E. Mountain View Road
Scottsdale, Arizona 85259

APPLICANT CONTACT

Earl Curley & Lagarde P C
602 265-0094

LOCATION

123rd Street & Mountain View Road

BACKGROUND

Background.

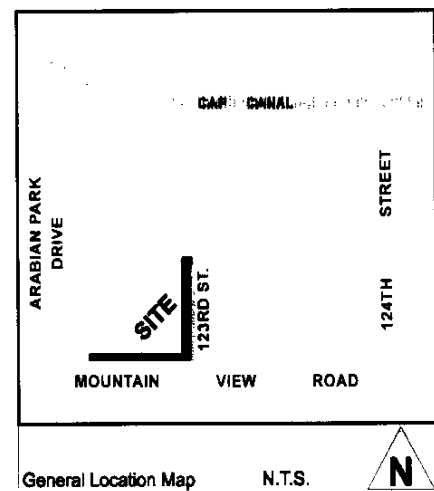
The subject 10 feet Mountain View Road right-of-way was originally dedicated in the County. The subject 20 feet and 46 feet radius 123rd Street cul-de-sac was dedicated in the city on the Pueblo Poquito subdivision plat recorded March 5th, 2002. The 123rd Street 33 feet General Land Office (GLO) patent easement was dedicated on the original GLO patent deed. This abandonment is being done in conjunction with a Replat of the Pueblo Poquito subdivision.

Zoning.

The site is zoned R1-43.

Context.

This case is the result of commencement of construction of roadway improvements for the Pueblo Poquito subdivision plat. These improvements were being constructed on a portion of the 33 feet GLO patent roadway easement of an adjacent property (Jaske's property). The property owners said



they were unaware that the GLO roadway easement existed, and was not in favor of the improvements.

Both property owners convened with their respective legal representatives and City of Scottsdale staff, and proceeded to an agreement to facilitate the construction of the improvements to serve the subdivision.

This agreement included quit claiming portions of the Jaske property to the Pueblo Poquito plat property owner, in exchange for relocating the roadway improvements, and wall improvements. It also included the Pueblo Poquito property owner filing an application to abandon the subject public right-of-ways, and 33 feet GLO roadway and utility easements of this case. It requires a Replat of the Pueblo Poquito subdivision, and revisions to engineering and landscape plans.

**APPLICANT'S
PROPOSAL****Goal/Purpose of Request.**

This request is to abandon both the 33 feet GLO patent roadway easement, and the 20 feet and 46 feet radius cul-de-sac public right-of way along the 123rd street alignment. The public right-of-way and a portion of the 33 feet GLO easement will be replaced with a private street shown as tract "B" on the Pueblo Poquito Replat map (Attachment #5).

The entry into 123rd Street will be a radius turn-around with a landscape island. This will enable vehicular traffic to turn-around if they are not proceeding through the gates into the subdivision. 123rd Street will be gated just past the turn-around area.

This request is also to abandon the north 10 feet of the Mountain View Road right-of-way. This will reduce the 40 feet half street on Mountain View Road along the Jaske property frontage to 30 feet, matching the Mountain View Road right-of-way of the Pueblo Poquito plat.

The goal of the abandonment is to change 123rd Street to a private street so as to reduce the 123rd Street roadway area as it affects the single-family lot. This abandonment request is also to reduce the Mountain View Road right-of-way to be consistent along both property frontages.

Key Issues.

- Resolves a dispute between property owners regarding access to property along 123rd Street.
- 123rd Street becomes private and city no longer responsible for maintenance.
- Eliminates public use of the subject roadway easements and public right-of-way.
- Dedicates radius turn-around to accommodate gated private streets.
- Enables a replat of the Pueblo Poquito subdivision.
- Maintenance of subject right-of-way will revert to the adjacent property owners.

Community Impact.

The abandonment will enable the two property owners to accomplish the agreed upon solution to construct the roadway, wall and landscape

improvements for the Pueblo Poquito Replat.

IMPACT ANALYSIS**Departmental Responses.**

City Department/Division participants concur with this abandonment request. See Department Issues Checklist (Attachment #1). An additional checklist item has been added to include the city's Legal Department position on General Land Office Patent easement abandonment.

Traffic.

123rd Street will change from a public to a private street and will serve the subject lots within the Pueblo Poquito subdivision. The private street will be gated north of a turn-around area located immediately north of Mountain View Road. The turn-around area will enable a vehicle to return to Mountain View Road if it is not continuing into the subdivision. An emergency and service vehicle access, and a public utility easement will be dedicated over the private street to provide services.

There shall be no direct access on to Mountain View Road by the lots within the Pueblo Poquito subdivision. The change to a private street will not have an adverse affect on the local street system. The Jaskie property will continue to access Mountain View Road.

Community involvement.

At the time of writing this report, one citizen contacted us with a question about access.

STAFF**RECOMMENDATION****Recommended Approach:**

Staff recommends approval, subject to the following stipulations:

1. The recordation of the Pueblo Poquito Amended final plat.
2. Reservation of a public trail easement over the subject 10 feet Mountain View Road public right-of-way.

Summary of Planning Commission Comments:

Most Commissioners were in favor of the solution, but believed it was not in the best interest of the city to abandon the 10 feet Mountain View Road right-of-way without reservation of a public trail easement.

Mr. Spiro spoke in opposition to abandoning any GLO easement. A letter from Mr. John Aleo was read into the minutes objecting to the abandonment of GLO easements and that private access remain even after the city abandons their interest. One Commissioner also voiced concern about the same private access interest.

Planning Commission Recommendation:

The Planning Commission recommends approval of the abandonment of the 20-foot wide section of 123rd Street along with the cul-de-sac portion, the City's interest in the GLO Patent Roadway Easement along 123rd Street and converting the 10-foot public right-of-way along Mountain View Road to a 10-foot trail easement. This recommendation was passed by a vote of 5-2.

RESPONSIBLE

Planning and Development Services Department

DEPT(S)

STAFF CONTACT(S)

Pete Deeley
Project Coordination Manager
480-312-2554
E-mail: pdeeley@ScottsdaleAZ.gov


Jeff Fisher
Interim Plan Review and Permit
Services Director
480-312-7619
E-mail: jefisher@ScottsdaleAz.gov

APPROVED BY


Kroy Ekblaw

Planning and Development Services General Manager


Date


Ed Gawf
Deputy City Manager


Date

ATTACHMENTS

1. Departmental Checklist
2. Context Aerial
3. Detail Aerial-pre- abandonment
- 3A. Detail Aerial-pre- abandonment
4. Pueblo Poquito final plat map
5. Pueblo Poquito Amended plat map
6. February 26, 2003 Planning Commission Minutes
7. Resolution No. 6268
Exhibit A - Written Legal Description
Exhibit B - Graphic

CASE 11-AB-2002

Department Issues Checklist

Legal Department

☒ Support—The City Attorney's office has stated that in abandoning this GLO easement, the city is abandoning the public access rights, in accordance with the cases, which permit the governing body of the local government to make those decisions. The City's abandonment of a GLO easement does not include any determination of private rights, nor does the City's action release any private rights if they are later found to exist. Similar to other private easement rights, those are matters between private property owners.

Transportation

☒ Support—The abandonment of the subject right-of-way and General Land Office patent easements will result in a private street at this location. The radius turn-around will enable emergency vehicles and other vehicles the ability to turn-around if they are not proceeding north on 123rd Street.

Trails

☒ Support—The public trails requirement in this area is located along Mountain View Road and along the east property line of the Pueblo Poquito subdivision. These trail requirements are being dedicated on the Pueblo Poquito Replat and by reservation over the 10-foot Mountain View Road requested abandonment area adjacent to the Jaskie property.

Adjacent Property Owner Notification

☒ Support—All adjacent property owners are in concurrence with this request.

Public Utilities

☒ Support—Public utility easements are being dedicated on the Replat of Pueblo Poquito to facilitate public utility locations.

Emergency/Municipal Services

☒ Support—Emergency service vehicle access is being provided over all private street location.

Attachment #1

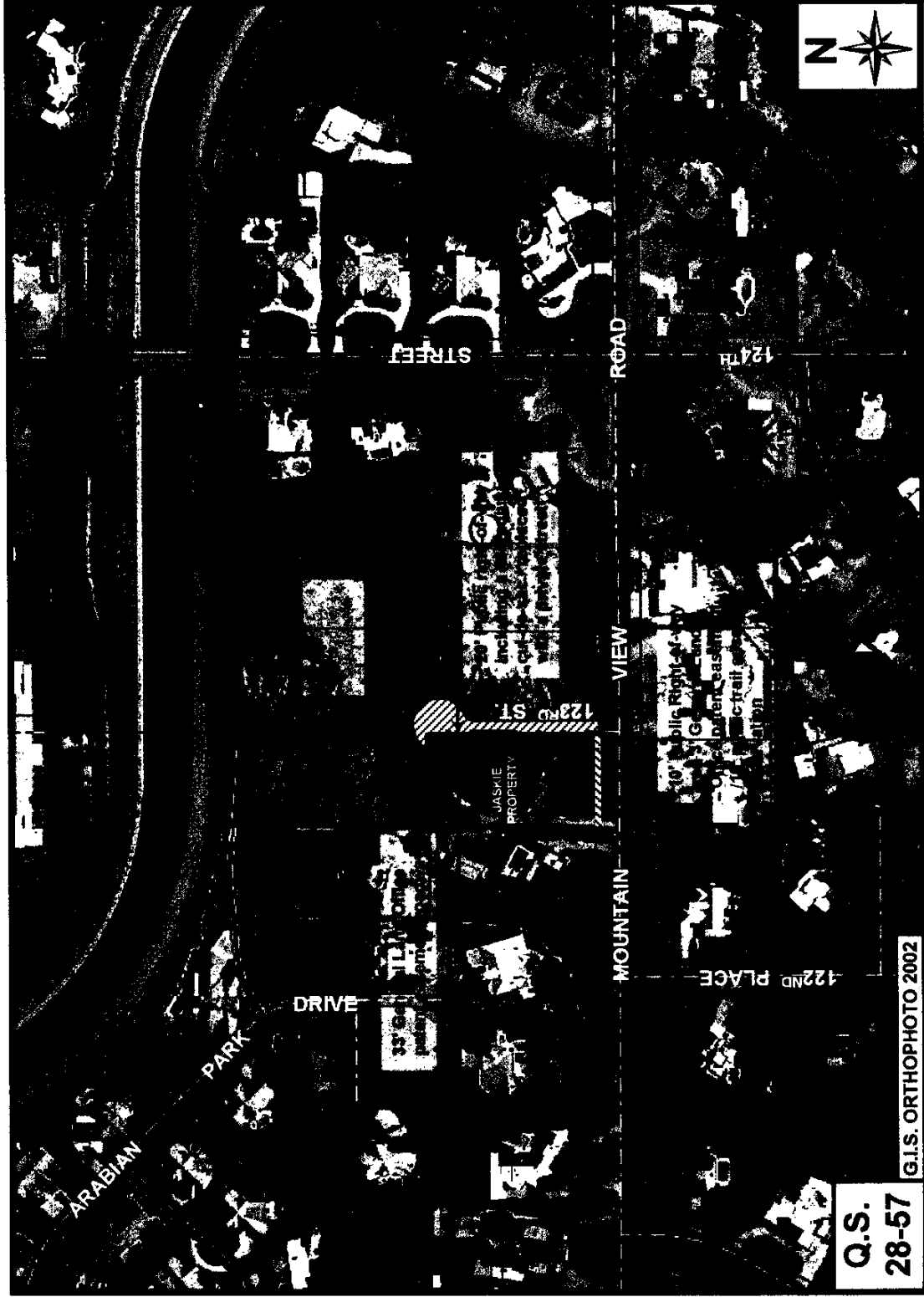
Attachment #1

Water/Sewer Services

☒ Support—Public utility easement are being provided to facilitate all water and sewer locations.

Drainage

☒ Support—Drainage easements were required according to city requirements at the time of the Pueblo Poquito subdivision plat. This request does not alter any conditions of the original subdivision.

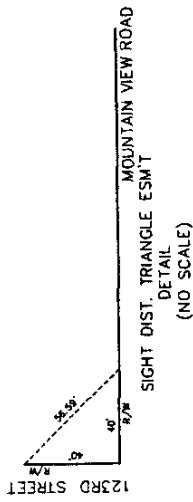


11-AB-2002

123RD Street & Mountain View Road

ATTACHMENT #2





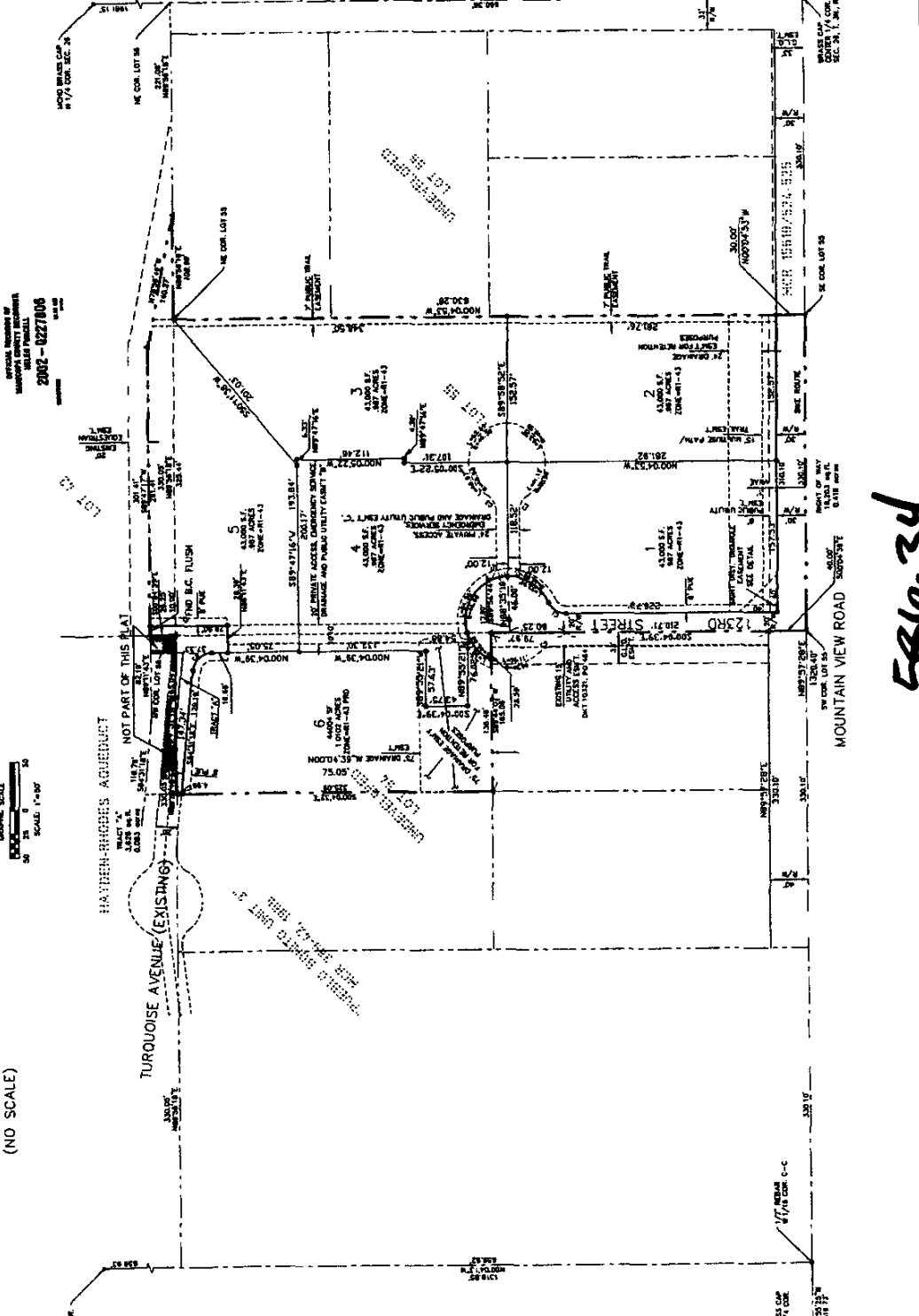
CURVE	STATION	CHORD	CHORD BEARING	CHORD DIST.	CHORD BEARING	CHORD DIST.	CHORD BEARING	CHORD DIST.	CHORD BEARING	CHORD DIST.
1	123RD STREET	123RD STREET	123RD STREET	123RD STREET	123RD STREET	123RD STREET	123RD STREET	123RD STREET	123RD STREET	123RD STREET

NOTE
THE CITY OF SOUTHWEST IS TO ASSUME
LIABILITY FOR THE COUNTESS TRAIL.

LEGEND
INDICATES SET 1/4" MEAN
INDICATES FOUND 1/4" MEAN
INDICATES FOUND 1/4" MEAN
SET WITH 1/4" MEAN IN N.E. COR. 2013

BASIS OF BEARING
BEARING IS THE BEARING OF THE CENTER LINE OF MOUNTAIN VIEW ROAD
FOR THE CENTER LINE OF MOUNTAIN VIEW ROAD

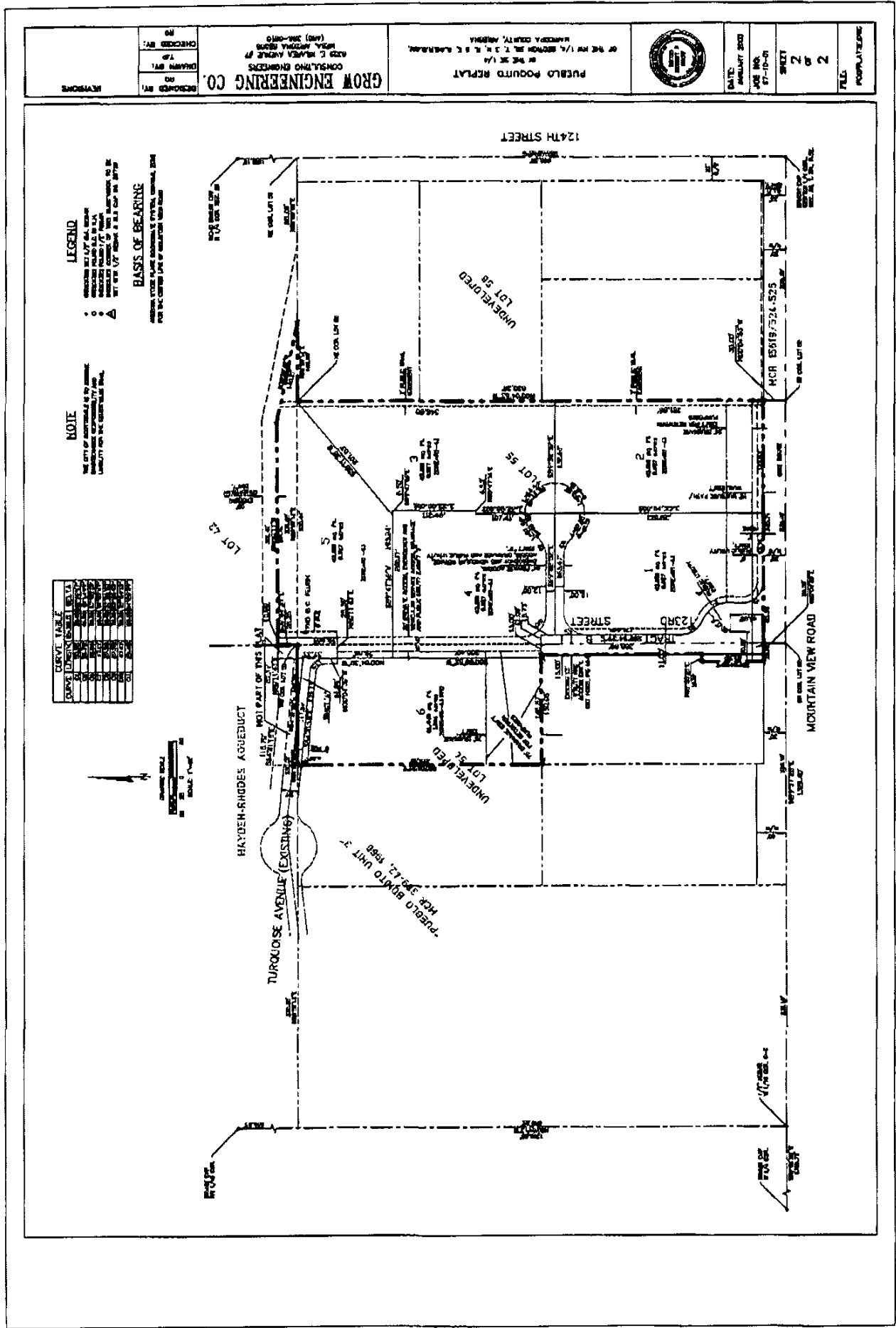
BOOK 586 PAGE 34
OFFICIAL RECORD OF
MOUNTAIN VIEW ROAD
2000-0227806



586-34

PUEBLO POQUITO FINAL PLAT MAP

<p>FILE: POOPPLAT.DWG</p>		<p>SHEET 2 OF 2</p>		<p>JOB NO. 586-34</p>		<p>DATE: JANUARY 2002</p>		<p>SEAL</p>	
<p>PUEBLO POQUITO</p>									
<p>PORTIONS OF LOTS 42, 54 AND 55 IN THE SE 1/4 OF THE NW 1/4 SECTION 26, T.33 N. R. 5 E. Q.4 S. M.B.M.</p>									
<p>MAP OF PUEBLO POQUITO, ARIZONA</p>									
<p>DESIGNED BY: GROW ENGINEERING CO.</p>									
<p>DRAWN BY: GROW ENGINEERING CO.</p>									
<p>CHECKED BY: GROW ENGINEERING CO.</p>									
<p>NO. 400 358-0010</p>									
<p>3522 E. MILANA AVENUE #7</p>									
<p>MESA, ARIZONA 85208</p>									
<p>REVISIONS</p>									



PUEBLO POQUITO REPLAT MAP

ATTACHMENT #5

GROW ENGINEERING CO. CONSULTING ENGINEERS 1200 N. 10TH STREET, SUITE 100 DENVER, CO 80202 (303) 733-1100		PUEBLO POQUITO REPLAT OF THE NW 1/4, SECTION 36, T. 3 N., R. 3 E., S. 48 N.W. 1/4 HARRIS COUNTY, TEXAS		
DESIGNED BY:	CHECKED BY:	DATE:	APPROVED BY:	SHEET 2 OF 2
DRAWN BY:	DATE:	DATE:	DATE:	SCALE 1" = 40'
REVISIONS				TITLE PUEBLO POQUITO REPLAT

LEGEND

○ CENTER POINT OF CURVE
 △ POINT OF BEGINNING OF CURVE
 ▲ POINT OF ENDING OF CURVE
 * POINT OF INTERSECTION OF CURVES
 * POINT OF TANGENCY OF CURVES
 * POINT OF BEGINNING OF TANGENT
 * POINT OF ENDING OF TANGENT

NOTE

THE CITY OF DENVER IS TO BE
 RESPONSIBLE FOR THE ACCURACY OF
 THE SURVEY AND THE REPLICATED
 MAP. THE CITY OF DENVER IS NOT
 RESPONSIBLE FOR THE ACCURACY OF
 THE SURVEY AND THE REPLICATED
 MAP. THE CITY OF DENVER IS NOT
 RESPONSIBLE FOR THE ACCURACY OF
 THE SURVEY AND THE REPLICATED
 MAP.

CURVE	LENGTH	BEARING	AREA	PERIMETER
1	1.00	90.00	0.00	0.00
2	1.00	90.00	0.00	0.00
3	1.00	90.00	0.00	0.00
4	1.00	90.00	0.00	0.00
5	1.00	90.00	0.00	0.00
6	1.00	90.00	0.00	0.00
7	1.00	90.00	0.00	0.00
8	1.00	90.00	0.00	0.00
9	1.00	90.00	0.00	0.00
10	1.00	90.00	0.00	0.00
11	1.00	90.00	0.00	0.00
12	1.00	90.00	0.00	0.00
13	1.00	90.00	0.00	0.00
14	1.00	90.00	0.00	0.00
15	1.00	90.00	0.00	0.00
16	1.00	90.00	0.00	0.00
17	1.00	90.00	0.00	0.00
18	1.00	90.00	0.00	0.00
19	1.00	90.00	0.00	0.00
20	1.00	90.00	0.00	0.00
21	1.00	90.00	0.00	0.00
22	1.00	90.00	0.00	0.00
23	1.00	90.00	0.00	0.00
24	1.00	90.00	0.00	0.00
25	1.00	90.00	0.00	0.00
26	1.00	90.00	0.00	0.00
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28	1.00	90.00	0.00	0.00
29	1.00	90.00	0.00	0.00
30	1.00	90.00	0.00	0.00
31	1.00	90.00	0.00	0.00
32	1.00	90.00	0.00	0.00
33	1.00	90.00	0.00	0.00
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35	1.00	90.00	0.00	0.00
36	1.00	90.00	0.00	0.00
37	1.00	90.00	0.00	0.00
38	1.00	90.00	0.00	0.00
39	1.00	90.00	0.00	0.00
40	1.00	90.00	0.00	0.00
41	1.00	90.00	0.00	0.00
42	1.00	90.00	0.00	0.00
43	1.00	90.00	0.00	0.00
44	1.00	90.00	0.00	0.00
45	1.00	90.00	0.00	0.00
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52	1.00	90.00	0.00	0.00
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57	1.00	90.00	0.00	0.00
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63	1.00	90.00	0.00	0.00
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65	1.00	90.00	0.00	0.00
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72	1.00	90.00	0.00	0.00
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82	1.00	90.00	0.00	0.00
83	1.00	90.00	0.00	0.00
84	1.00	90.00	0.00	0.00
85	1.00	90.00	0.00	0.00
86	1.00	90.00	0.00	0.00
87	1.00	90.00	0.00	0.00
88	1.00	90.00	0.00	0.00
89	1.00	90.00	0.00	0.00
90	1.00	90.00	0.00	0.00
91	1.00	90.00	0.00	0.00
92	1.00	90.00	0.00	0.00
93	1.00	90.00	0.00	0.00
94	1.00	90.00	0.00	0.00
95	1.00	90.00	0.00	0.00
96	1.00	90.00	0.00	0.00
97	1.00	90.00	0.00	0.00
98	1.00	90.00	0.00	0.00
99	1.00	90.00	0.00	0.00
100	1.00	90.00	0.00	0.00

REGULAR AGENDA

11-AB-2002 (Pueblo PoQuito Abandonment) request by Earl Curley & Lagarde PC, applicant, Saddle Rock Ranch LLC, owner, to abandon a certain portion of the north 10 feet public right-of-way for Mountain View Road, a 20 feet wide section of 123rd Street public right-of-way including a 46 feet radius cul-de-sac, and a 33 feet General Land Office patent roadway easement along the 123rd Street alignment. 123rd Street will change from a public to a private street.

CHAIRMAN GULINO stated several months ago they had a rash of the GLO easement cases and everyone who has been involved with this knows that there is a difference of opinion regarding legalities and whether they can abandon these. He further stated they are not here to discuss the legalities of this. This issue has been discussed with the City Attorney and City Council and they have gotten their direction. He remarked he would not stifle anyone's opportunity to make their opinions known but he wants to remind them that they are here to discuss land use issues. He concluded he would appreciate that any comments regarding legality be kept short and to the point.

MR. GRANT stated staff received a letter from John Aleo who requested his comments be read into the record:

"If it is the city's choice, I suppose that the city may revoke its' interest in a patent easement on behalf of public use. To lead the public in thinking that the patent easement goes away or disappears along with the beneficial interest of the affected parties, creates nothing but disclosure problems for everyone concerned now and in the future. For the city to issue building permits to erect permanent structures onto patent easements also creates unnecessary disclosure problems.

There are no provision in the federal law that created these patent easements to abandon them. Therefore, it is the city and surveyors obligation to make sure that the patent easement remain on the plat of survey/site plan, and the public should be made aware of the ramifications of blocking, impeding, and interfering with patent easements. By not showing the patent easements on the plat of surveyor, property owners are not aware of them, and that's where the problem starts.

The attorneys for the local governing body and the client/property owners should make the affected parties aware of the consequences of blocking, impeding, and interfacing with the patent easements. Not to do so is a vagrancy of their duty to disclose the ramifications to those concerned.

I am sure that you all have seen the memo dated November 1, 2002 addressed to J.D. Hayworth, US Congressman, from Pamela Baldwin, Legislative Counsel American Law Div. If not, I be happy to provide you with one."

MR. DEELEY stated that earlier he passed out some new exhibits because the exhibits included in the packet don't match the report. He provided a brief review of where the

exhibits did not match. He presented this case as per the project coordination packet. Staff recommends approval of the abandonment as proposed.

COMMISSIONER HEITEL stated he does not understand if the purpose is to accommodate the Jaske property owner with a problem regarding this easement issue, why are they requesting an abandonment of part of that roadway when we have a trail in there. Why are they not taking that trail easement as a condition of assisting with problems of this easement? He further stated that he has a real concern that we know there is a trail there. They know there is potential uses for that right-of-way and they are here just right on the heels of the discussion about trails and maximizing right-of-way and they are abandoning part of the trail buffer. He remarked he would encourage the commissioners to think about that portion of the request and the adverse impact it will have on perpetuating this trail process and they are providing this Jaske property owner, if they pass this, some relief to a problem that appears they have created itself.

COMMISSIONER NELSEN inquired how the Jaske property was allowed to be developed onto the GLO easement. He also inquired if it was developed in the City of Scottsdale. Mr. Deeley replied the lot is within the City of Scottsdale and there is a 33-foot roadway easement along there. He further stated the developer tried to negotiate the purchasing of the property from him over a period of time and there was a GLO roadway easement and, based on that have been advised he would be entitled to put improvement in there. He provided information on the adjacent property on the east side of 123rd Street that abandoned their GLO easement back in 1999.

Commissioner Nelsen stated this speaks to the letter written by Mr. Aleo on what happens when the city goes down this path abandoning GLO easements. This is just a problem that popped up. He further stated he would concur with Commissioner Heitel that in abandoning this we are eliminating some opportunities for appropriate trail placement in the future. Notwithstanding that as reflected in Mr. Aleo's letter GLO easements don't go away. The City may abandon their interest in it but they still exist. He provided information on a similar well-known case where a GLO easement was blocked and everything that blocked that easement was required to be torn down and removed. These are some of the issues they need to keep in mind. He further remarked first and foremost they need to leave their opportunities open for a trail. Again if 123rd becomes a private street that opens the issue for somebody to consider a private access easement right as patentees to the GLO easements because they might want access to the future trail along the CAP canal. He commented these are issues that need to be addressed before the City considers abandoning this.

LYNNE LAGARDE, 3101 N. Central Suite 100, Phoenix, AZ, stated she represents the applicant. She provided background information on this property. She further stated the purpose of this request is to abandon both the 33 feet GLO patent roadway easement, and the 20 feet and 46 feet radius cul-de-sac public right-of-way along 123rd Street alignment. The public right-of-way and a portion of the 33 feet GLO will be replaced with a private street. She discussed Mr. Jaske's concerns. She remarked they have been spending time since April or May negotiating through Mr. Jaske's Attorney to come up with a solution to the entry to the roadway that would have less impact on his home and the impact would be more toward the front and not the rear yard. She reported they have two signed letter agreements and the City facilitated this agreement between the

parties. She further reported they believe it is a fair agreement that solves a difficult issue for landowners. She provided an overview of where the trails would be located through this property. She noted her client has been more than accommodating of the public trails system.

Ms. Lagarde remarked she does not represent Mr. Jaske but felt she should let them know what his position was and what he bargained for. She further remarked she felt it would not be fair to Mr. Jaske to change the terms of the deal they all negotiated in good faith. She requested they approve this abandonment. She further remarked as they can see there is no where for the GLO easement to go part of it has been abandoned and the rest is being abandoned by the only one who would have a private right to enforce.

CHAIRMAN GULINO inquired since this application includes part of the abandonment on Mr. Jaske's property is he part of the application. Ms. Lagarde replied in the affirmative. Chairman Gulino stated he is just not present. Ms. Lagarde replied that is correct but he signed to authorize the application, which is required by the City.

COMMISSIONER NELSEN inquired what private right to the GLO easement is Ms. Lagarde speaking of. Ms. Lagarde replied her point is that if there is any private right in the GLO easement there is not one to assert it.

Commissioner Nelssen inquired why Ms. Lagarde's client was not exercising their right to use the 33-foot GLO patent easement on Mr. Jaske's property. Ms. Lagarde stated they did and that is how they got their plat approved. Commissioner Nelssen inquired so what is the problem in using that because don't they have the legal right to use it. Ms. Lagarde stated they absolutely did they could have developed it exactly as it was approved but they were asked by Mr. Jaske and the city to re-plat which was at a great expense to her client in order to have less impact on the lot. Commissioner Nelssen inquired just out of goodwill you did this. Ms. Lagarde replied they think it improved the subdivision as well as having less impact to Mr. Jaske's lot. They thought it was a better arrangement from a land use perspective to have a gated entry up here and both parties would benefit. Commissioner Nelssen stated it may be a better plan but the access rights to the patent easements go with the land not the property owner. Ms. Lagarde replied they understand that.

COMMISSIONER STEINBERG inquired what they would be doing with the re-configured entry off of Mountain View. Ms. Lagarde replied there would not be landscaping in the cul-de-sac but there is landscaping on either side of the wall. The walls would be low. Ron Burke, 16140 E. Jomax, provided information on the landscaping in the Cul-de-sac Island.

COMMISSIONER HEITEL stated it appears Mr. Burke has done an extraordinarily generous move in putting this project off a year or two to accommodate Mr. Jaske. In an effort to assist Mr. Jaske, he is not willing to dedicate a public trail. He further stated the Commission has a responsibility to the community at large to ensure the trail systems are propagated in a proper manner. He remarked he appreciates Ms. Lagarde's statement that it was not appropriate to go back on a deal that was structured between the parties. It seems strange because what purpose would the Commission have if they can just go to staff and structure their deals and the Commission is just suppose to

rubber stamp them. He reported he felt it was not in the public's interest to abandon the 10 feet of right-of-way that is needed for a trail system because a trail is there. He further reported he would hope his fellow commissioners would agree with him. Ms. Lagarde stated she would agree that it is in the Commission's discretion to do what is in the best interest of the community. On the other hand, she must represent the bargain they made with Mr. Jaske.

COMMISSIONER OSTERMAN inquired if the 10-foot trail easement on the west side of the Jaske property is part of the recognized trail system plan. Mr. Deeley replied in the affirmative.

COMMISSIONER NELSEN stated he does not understand why it is necessary to abandon the GLO easement on Mr. Jaske's property. Ms. Lagarde replied the reason it is necessary is because they can't put a private street within an GLO easement. Commissioner Nelsen expressed his concern that Mr. Jaske is not willing to dedicate a portion of the easement back for a trail. Chairman Gulino stated let's not confuse the fact that the trail and the GLO easement are in two different locations. Commissioner Nelsen stated they are in different locations because that is part of the agreement but the trail could be in the 33-foot easement. Ms. Lagarde stated it has been abandoned to the north of the Jaske property. It does not exist to the north of the Jaske property. Commissioner Nelsen stated the access rights go with the land so he is under the belief that the access rights to that GLO easement goes all the way up to the canal. The only people that have abandoned their rights are the City of Scottsdale. Ms. Lagarde replied that is his opinion and she does not share that opinion as to the existence of private access rights once the community has abandoned a GLO easement as public dedication. Commissioner Nelsen replied it is Federal Law but we are not here to discuss that they are here to discuss land use and there are still some unanswered questions.

MR. GRANT provided background information on this case. He stated this request came up because of a dispute between two property owners and the city got involved because it seemed to be a preferable solution to having two people feuding over a grading operation that was on one person's property. They determined it would be preferable to work out a solution that would be mutually satisfactory to both parties. Clearly, there are some questions about whether that was necessary from a legal standpoint to be done but from the standpoint of meeting two property owners' needs they have succeeded. The issue regarding the 10-foot on Mountain View whether that is a requisite part of the remainder of this request could be discussed and they could proceed without that being a portion of the application.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

LEON SPIRO, 7814 E. Oberlin Way, showed the document of the Federal Land Patent for his property. He inquired if the City Attorney had been asked for his opinion regarding what has been going on between these parties and staff. Mr. Spiro asked a series of questions regarding the reason for this request to abandon the GLO easement. He requested to see a copy of the roadway abandonment document. He inquired how the public would gain access to the trails. He also inquired why the patent easement was not shown on the site plan or plat of survey. Does the City plan on issuing building

permits to the applicant to develop structures on these patent easements. The Federal land patent that was issued by the Federal Government on each parcel sale in this area states this patent easement is subject to right-of-way not exceeding 33 feet in width for roadway and public utility purposes. He inquired if Mr. Pete Deeley has ever held the position of Engineering Service Director during the years he has worked for the City of Scottsdale. He stated he wants to know how people will get to the canal for recreation purposes. He concluded that they need to avoid this abandonment request.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

MR. DEELEY provided the Commission and Mr. Spiro with a copy of the abandonment resolution for the 1999 case for the portion north of this.

COMMISSIONER NELSEN stated Mr. Spiro asked whether Mr. Deeley has held the position of Engineering Director for the City of Scottsdale and he felt Mr. Spiro deserves an answer. Chairman Gulino stated that is not relevant to this case.

VICE CHAIRMAN LOTZAR stated he is supportive of this case as presented. He further stated many times they are disappointed that the neighbors have not worked together and this is a situation where the neighbors have worked together. The developer has worked with the neighbor at some expense at least by delaying the project and carrying the debt if any on his project and the like. Given that he felt this is a good solution. He remarked he felt it was not appropriate for them to start to re-trade the trail issue. He further remarked that he felt some level of comfort given what was demonstrated as far as access on a trail. Although it is not the same trail that one would be interested in this case, but one that gets one to the canal, and provides access to whatever recreation results from the canal.

COMMISSIONER HEITEL commented he is troubled by the fact that Mr. Jaske is unwilling to abandon the 10 feet that is planned as part of the trails system. He stated he would like to recognize the applicant and staff for trying to work out this difficult neighborhood problem and coming up with a solution to that problem. He further stated he would be able to support that portion of this request but he would not be able to support the abandonment of the 10-foot right-of-way along Mountain View Road.

COMMISSIONER OSTERMAN stated he would support the abandonment. He further stated he is also troubled by the refusal of the property owner to cooperate with the city and abandon the 10-foot trail easement that was actually planned as part of the trails system. He noted he wants to put that aside and see that as a separate issue. He further noted he would still support this abandonment. It is appropriate and a good cooperative effort between the two property owners. He concluded he felt it works best for this situation.

COMMISSIONER STEINBERG stated he would agree with his colleagues that the parties have worked hard to mitigate the situation but he is also troubled by the abandonment of the trail. He further stated he hates to see trails disappear.

COMMISSIONER HENRY stated she would concur.

APPROVED

COMMISSIONER NELSEN stated he would also concur with the effort put forth by the two property owners to bring forward a compatible plan but he cannot support this abandonment because of the loss of access and loss of future opportunity. He further stated there was a comment made about his opinion about GLO patent easements and he would like to address that. He remarked It is not his opinion it is also the opinion of the County Board of Supervisors, Maricopa County Arizona. It is opinion of the legislative counsel for the congress of the United States and his personal attorney and he is a GLO patentee. He noted he has had personal experience where he has been effected after he went through the process of abandoning an easement in the City of Scottsdale and he still has to provide access to his neighbors.

CHAIRMAN GULINO stated he does not have an objection to the abandonment on 123rd Street. He further stated he does have a problem with the abandonment of the 10 feet and he cannot support it without some provision being made for the trail. It is in the General Plan. It is unfortunate that this was not part of the discussion with the property owner early on. He remarked he would propose to whoever makes the motion that they pass this case on with a recommendation for approval with the added stipulation that we obtain the trail easement along Mountain View.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 11-AB-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL FOR THE ABANDONMENT OF A THE 20 FEET WIDE SECTION OF 123RD STREET PUBLIC RIGHT-OF-WAY REVOKING THE CITY'S INTEREST IN THE GLO PATENT ROADWAY EASEMENT ALONG 123RD AND CONVERTING THE 10 FOOT PUBLIC RIGHT-OF-WAY TO A 10 FOOT TRAIL EASEMENT. SECOND BY COMMISSIONER OSTERMAN.

THE MOTION PASSED BY A VOTE OF FIVE (5) TO TWO (2) WITH COMMISSIONER NELSEN AND COMMISSIONER STEINBERG DISSENTING.

7-ZN-2002#2 (Hotel Valley Ho) request by City of Scottsdale, applicant, MSR Properties LLC, owner, for approval of amended development standards for building height, front yard parking setback and frontage open space for the Hotel Valley Ho (8.86 +/- acre parcel) located at 6850 E Main Street with Highway Commercial, Historic Property (C-3 HP) zoning.

MS. ABELE presented this case as per the project coordination packet. Staff recommends the Planning Commission approval of this proposed amended development standards in case 7-ZN-2002#2 for the Hotel Valley Ho, as authorized by Section 6.119. Historic Preservation Plan, as an appropriate tool to achieve the historic preservation and planning objectives for this property of exceptional significance, subject to the attached stipulations.

CHAIRMAN GULINO stated he was under the impression that at some point the DR Board would review the amended standards. Ms Abele reported the Planning Commission approves the amended standards and then it would go through the DR process. She further reported it would be a joint review process with the DR Board and Historic Preservation Commission.

APPROVED

RESOLUTION NO. 6268

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, VACATING AND ABANDONING A PORTION OF THE PUBLIC RIGHT-OF-WAY, APPLICATION NO. 11-AB-2002, PURSUANT TO THE PROVISIONS OF THE ARIZONA REVISED STATUTES, ARTICLE 8, CHAPTER 20, TITLE 28.

WHEREAS, application has been made to the Council of the City of Scottsdale for abandonment of a portion of public right-of-way; and

WHEREAS, A.R.S. Sec. 28-7202 provides that a city may dispose of a roadway or portion thereof when said property or portion thereof is no longer necessary for public use; and

WHEREAS, after notice to the public, hearings have been held before the Planning Commission and Council of the City of Scottsdale on the proposed abandonment of a portion of the public right-of-way, described in Application No. 11-AB-2002, within the City of Scottsdale; and

WHEREAS, it is in the opinion of the Council that the portion of public right-of-way described herein below is no longer necessary for public uses as roadway; and

WHEREAS, the City Council finds that consideration and other public benefit commensurate with the value of the property, giving due consideration to its degree of fragmentation and marketability, will be provided by the owner of the abutting property to the city.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Arizona, as follows:

Attachment #7

Page two
Resolution No. 6268

That the real property situated within the City of Scottsdale, Maricopa County, Arizona, and described in Exhibit "A" attached hereto and by this reference made a part hereof; be and the same is hereby vacated and abandoned subject to the reservation of a 10 foot public trail easement over the Parcel A, the Jaskie's Mountain View Road Abandonment portion as described on the legal description Exhibit "A" and as depicted on map marked Exhibit "B", and an easement for all existing utilities and reservation of such rights as are specified in A.R.S. Sections 28-7210 and 28-7215. A map marked Exhibit "B" disclosing the area vacated is attached hereto and by this reference made a part hereof.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ____ day of _____, 2003.

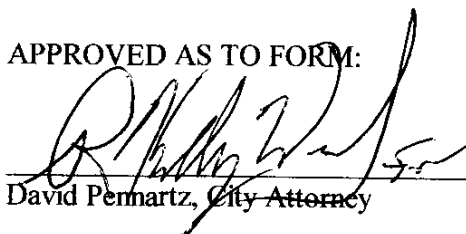
Mary Manross, Mayor

ATTEST:

Sonia Robertson
City Clerk

By: _____
City Clerk

APPROVED AS TO FORM:



David Pennartz, City Attorney

ROBERT P. GROW, P.E., R.L.S.

PUEBLO POQUITO ABANDONMENTS

November 12, 2002

Parcel A

Jaskie's Mountain View Road Abandonment

The northerly 10.00 feet of the southerly 40.00 feet, except the easterly 25.00 feet thereof, of the southeasterly quarter of Lot 54 of Section 26, Township 3 North, Range 5 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Parcel B

Pueblo Poquito Mountain View Road Abandonment

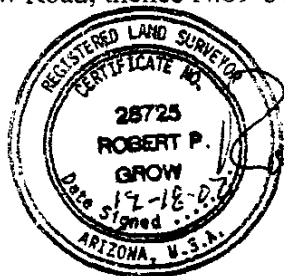
The easterly 25.00 feet of the northerly 10.00 feet of the southerly 40.00 feet of the southeasterly quarter of Lot 54 of Section 26, Township 3 North, Range 5 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Parcel C

Jaskie's GLO Easement Abandonment

A portion of the Southeast Quarter of Lot 54 in the Southeast Quarter of the Northwest Quarter of Section 26, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

Commencing at the brass cap monument marking the Center Quarter Corner of said Section 26; thence S.89°57'28"W. along the East/West center of section line 660.20 feet to the Southeast Corner of said Lot 54 and the Southwest Corner of Lot 55; thence N.00°04'39"W., 40.00 feet along the line between said Lots to the northerly right-of-way line of Mountain View Road; thence S.89°57'28"W., 25.00 feet along said line to the POINT OF BEGINNING; thence N.00°04'39"W., 73.76 feet; thence N.89°55'21"E., 10.00 feet; thence N.00°04'39"W., 216.86 feet to the northerly line of the Southeast Quarter of said Lot 54; thence S.89°57'28"W., 18.00 feet along said line; thence S.00°04'39"E., 290.56 feet to the northerly right-of-way line of Mountain View Road; thence N.89°57'28"E., 8.00 feet along said line to the POINT OF BEGINNING.



- 1 -

8322 E. Kilarea Ave. #7 * Mesa, Arizona 85208 * (480) 358-0810

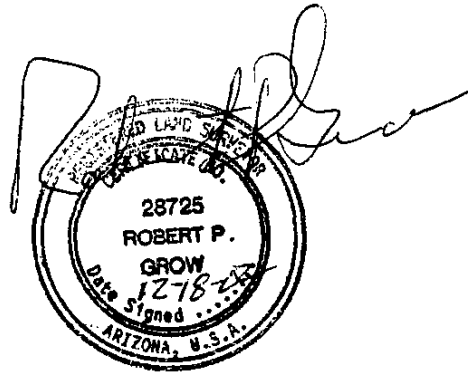
EXHIBIT "A"

ROBERT P. GROW, P.E., R.L.S.

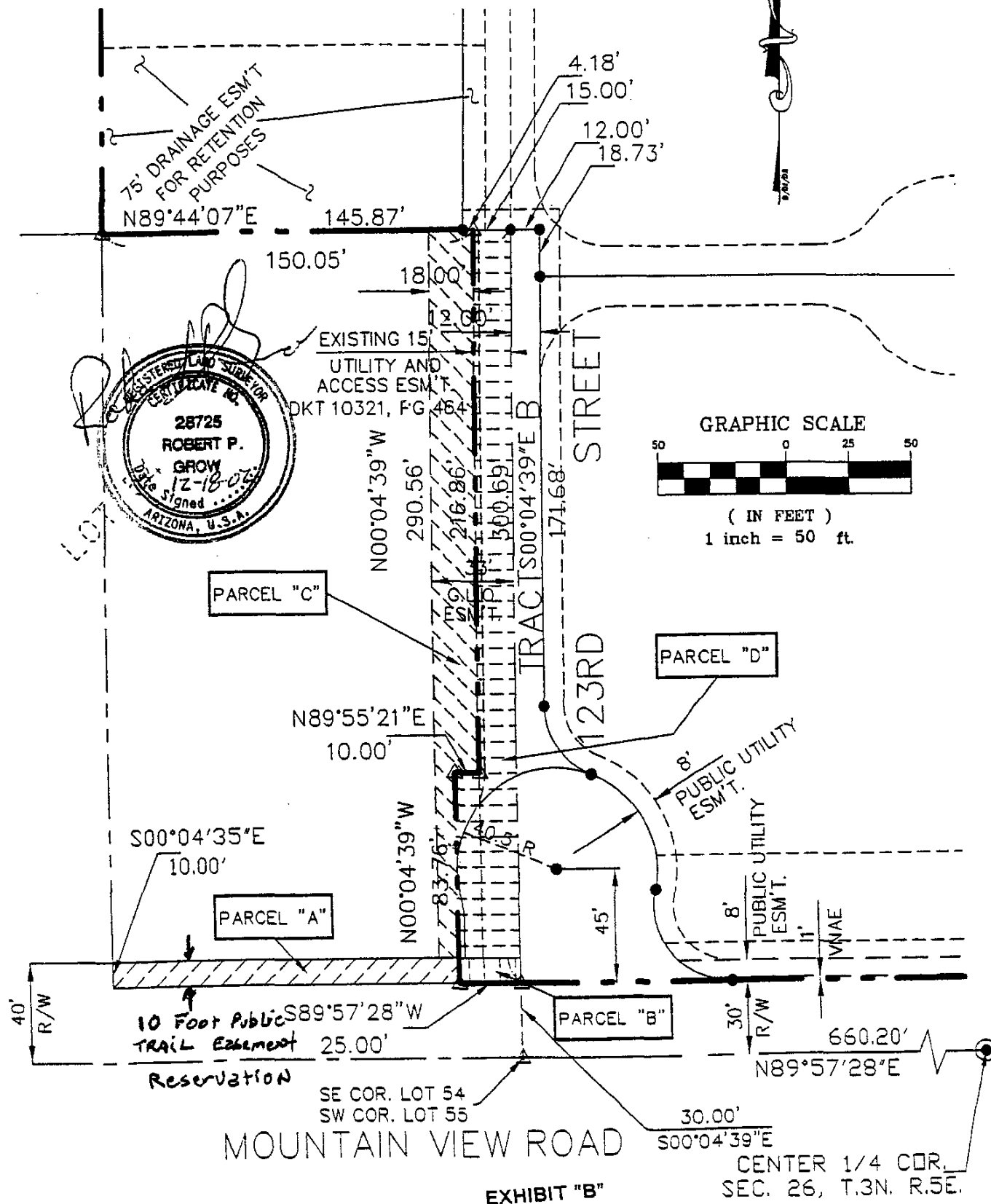
Parcel D Pueblo Poquito 123rd Street Abandonment

A portion of the Southeast Quarter of Lot 54 in the Southeast Quarter of the Northwest Quarter of Section 26, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

Commencing at the brass cap monument marking the Center Quarter Corner of said Section 26; thence S.89°57'28"W. along the East/West center of section line 660.20 feet to the Southeast Corner of said Lot 54 and the Southwest Corner of Lot 55; thence N.00°04'39"W., 40.00 feet along the line between said Lots to the POINT OF BEGINNING at the northerly right-of-way line of Mountain View Road; thence continuing N.00°04'39"W., 290.69 feet to the Northeast Corner of the Southeast Quarter of said Lot 54; thence S. 89°44'07"W., 15.00 feet along the northerly line thereof; thence S.00°04'39"E., 216.86 feet; thence S.89°55'21"W., 10.00 feet; thence S.00°04'39"E., 73.76 feet to the said northerly line of Mountain View Road; thence N.89°57'28"E., 25.00 feet along said line to the point of beginning.



9/24/21



CITY COUNCIL REPORT



MEETING DATE: 4/15/03

ITEM No. 21 GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT Replat of Pueblo Poquito Subdivision

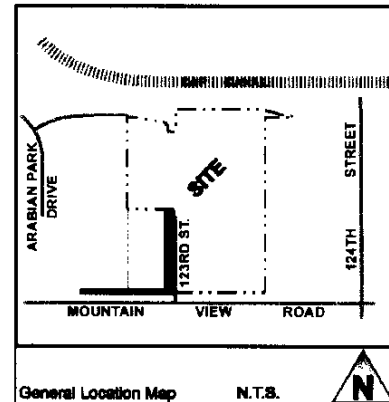
REQUEST Request to approve a replat of a 6 lot single-family subdivision.
10-PP-1998#2

Related Cases:
(10-PP-98,99-DR-98,20-AB-99,11-AB-02)

OWNER Saddle Rock Ranch L L C
480-860-6463

APPLICANT CONTACT Earl Curley & Lagarde P C
602-265-0094

LOCATION Northeast Corner Mountain View
& 123rd Street



BACKGROUND The Pueblo Poquito subdivision plat was approved by City Council on January 4, 2000. This request is to approve a replat of the Pueblo Poquito subdivision. The reason for the replat is to change the 123rd Street public right-of-way to a private street.

This replat is being processed in conjunction with abandonment Case 11-AB-2002.

This replat request represents an agreement between two neighbors as a solution to mitigate the affect of 123rd Street as it relates to the adjacent single family lot. The creation of the private street is the result of a quitclaim of property from the single-family property to the subdivision, in exchange for favorable location of the roadway improvements, and wall improvements.

**APPLICANT'S
PROPOSAL**

Goal/Purpose of Request.

The purpose of the City Council final plat approval is to authorize the recordation of the final plat with the Maricopa County records office. The City Council approval process is the last step to confirm the plat is consistency with the preliminary plat approval prior to recordation with county.

Applicant's Request.

The request is to approve a replat of a 6-lot subdivision plat. The street

configuration for 123rd Street is being changed from a public to private street. The turn-around area is being relocated to immediately adjacent to Mountain View Road, rather than in its present location, 300 feet north of Mountain View Road.

The private street provides emergency and service vehicle access, as well as the same access to the lots as the original subdivision plat. A property owners association will maintain the private street.

The replat of this subdivision results in the same number of lots.

IMPACT ANALYSIS**Traffic:**

123rd street will change from a public street to a private street and will serve the subject lots within the Pueblo Poquito subdivision. The private street will be gated north of a turn-around area located immediately north of Mountain View Road. The turn-around area will enable a vehicle to return to Mountain View Road if it is not continuing into the subdivision. An emergency and service vehicle access, and a public utility easement will be dedicated over the private track to provide services.

The north half improvements for Mountain View Road will not be constructed at this time. An in-lieu of street improvements payment will be paid for a minor collector half street by the developer. This requirement is consistent with the original Pueblo Poquito Plat.

There shall be no direct access on to Mountain View Road by the lots within the Pueblo Poquito subdivision. This plat will not have an adverse affect to the local street system.

Trails:

A 7 foot public trail easement will be dedicated along the east boundary of the subject plat and a 15 foot trail easement along the entire Mountain View Road frontage in conformance with the city's trail plan.

Water/Sewer:

The water and sewer will be constructed by the developer and dedicated to the City for maintenance.

Police/Fire:

This plat has been review by Rural/Metro Fire Department and it conforms to the minimum requirements for fire apparatus access.

Community involvement:

This replat facilitates an agreement between two adjacent neighbors to help mitigate the impact of 123rd Street improvement.

**STAFF
RECOMMENDATION****Recommended Approach:**

Staff recommends that the amended final plat be approved as presented.

Proposed Next Steps:

Approval will enable the amended final plat to be recorded, establishing


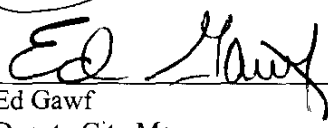
the new private street, lots, and easements.

RESPONSIBLE DEPT(S) **Planning and Development Services Department**
Current Planning Services

STAFF CONTACT(S)

Al Ward	Randy Grant
Senior Planner	Chief Planning Officer
480-312-7067	480-312-7795
E-mail: award@ScottsdaleAZ.gov	E-mail: rgrant@ScottsdaleAz.gov

APPROVED BY

 Kroy Ekblaw Planning and Development Services General Manager	<u>for ICE</u> 4/2/03 Date
 Ed Gawf Deputy City Manager	4/2/03 Date

ATTACHMENTS

1. Pueblo Poquito Amended Final Plat
2. Pueblo Poquito Final Plat

